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NUCLEAR REGULATORY COMMISSION

Title: Public Meeting to Discuss the

Decommissioning Criteria of the West Valley Demonstration Project

Docket Number: (not applicable)

Location: Ashford Hollow, New York

(near West Valley)

Date: Wednesday, April 17, 2002

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1	UNITED STATES OF AMERICA
2	NUCLEAR REGULATORY COMMISSION
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4	PUBLIC MEETING TO DISCUSS THE
5	DECOMMISSIONING CRITERIA OF THE
6	WEST VALLEY DEMONSTRATION PROJECT
7	+ + + +
8	WEDNESDAY, APRIL 17, 2002
9	+ + + +
10	Conference Room C-1
11	Ashford Office Complex
12	9030 Route 219
13	Ashford Hollow, New York
14	
15	The Public Meeting commenced at 7:00 p.m.
16	NRC STAFF:
17	FRANCIS "CHIP" CAMERON, Facilitator
18	LARRY W. CAMPER
19	CHAD J. GLENN
20	JAMES LIEBERMAN
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P-R-O-C-E-E-D-I-N-G-S

2 (7:03 p.m.)

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MR. CAMERON: My name is Chip Cameron, and I'd like to welcome you to tonight's meeting.

And I'm the Special Counsel for Public Liaison at the Nuclear Regulatory Commission, and it's my pleasure to serve as your facilitator tonight. And my job tonight will be to try to help you all have a productive meeting.

And I'd like to cover three things about the meeting process before we get into the substance of tonight's discussions. First, I'd like to talk about objectives of the meeting tonight. Secondly, I'd like to go over the format and ground rules for tonight's meeting. And, third, I'd like to just give you an overview of the agenda, so you know what to expect tonight.

objectives, first Tn terms of our objective is to try to give you a clear understanding of the responsibilities of the various regulatory agencies involved at the West Valley sites. only their responsibilities, but what is the relationship individual among those agency responsibilities.

Our second objective is to listen to your

comments, listen to your concerns, so that the agency can be mindful of those concerns, those comments, as they move to implement their various responsibility.

In terms of format, we're going to have a series of brief presentations by a number of agencies, and we're going to be going out to you for questions, for discussion, for comments on those responsibilities. The ground rules tonight are simple, and they're all aimed at trying to help us all have a productive meeting.

First, I would just ask you to try to be as concise as possible in your remarks tonight, and not only people in the audience but also speakers from the agencies. We have a lot of moving parts, so to speak to tonight's meeting, a lot of issues, and the most important thing is I want to make sure that everybody has a chance to participate that wants to participate. So if we're as spare as possible in our remarks, then we can — that will help to achieve that particular goal.

The second ground rule, if you want to speak, please raise your hand, and I will bring you this talking stick. And be patient; we will get to you if you have something to say.

The third ground rule is, please let's

have only one person talking at a time, most importantly so that we can give our full attention to whomever has the floor at the moment, but also because we are taking a transcript. Mary Ann is our stenographer tonight, and she's going to be taking down all of the presentations and comments. And if we have just one person speaking at a time, we could get a clear transcript.

That transcript will also be available from the NRC. If you would like to have a copy of it, it will also be posted on the NRC website.

In terms of the agenda for tonight's meeting, we thought it would be useful to have some context for you on where the -- on the status of the site cleanup. And so what we're going to do is we're going to ask Alice Miller from the Department of Energy, and Paul Piciulo from New York State Energy Research and Development Authority to give us some context on the site.

We're then going to go to the NRC responsibilities, and we have Larry Camper from the NRC and Chad Glenn, who are already up here, who are going to talk about NRC responsibilities generally for the West Valley site, and specifically the policy statement. We'll then go out to you for questions and

1 comments. 2 I just want to note that we will be asking 3 Alice Miller from DOE and -- Williams --4 (Laughter.) 5 I'm trying to think, where did that come from? 6 7 (Laughter.) Alice, my apologies. 8 (Laughter.) 9 10 Okay? And I'll probably make this mistake 11 a couple of other times tonight, so please excuse me. 12 But Alice and Paul -- I think Alice 13 probably works better. I won't forget that. 14 Alice and Paul will come back later on in the evening 15 when we have a general discussion. So if there are questions for the Department of Energy, for New York 16 17 State, they will be up here to answer those questions. I know that some people would like to make 18 formal comments perhaps, and I would just encourage 19 you -- we'd like to try to have this be as interactive 20 21 as possible, but we do have room for formal comments, 22 and we'll do that at the end of the evening. 23 you want to submit a written copy of those formal 24 comments, we'll make sure that we get them on the

agenda -- I mean, on the transcript, rather.

There may be things that come up, questions that you have during one particular set of presentations that don't fit squarely under that presentation. I'll put those down in the parking lot and make sure that we come back and get them before the end of the evening.

Also, anything -- there may be certain pieces of information that one of the various agencies will want to get back to you on. We'll also list that up there, so that we don't lose track of any of that.

We will try to get you out on time. We do have a lot of information to cover, but we'll try to end on time. But the staff of the various agencies will be here after the meeting to meet informally with you.

And I wanted to emphasize a point about continuity of this whole process. This is just one meeting tonight, and obviously we're not going to be able to do everything that we want to do. But I know that the NRC staff, the other agency staff, are receptive to talking to you. I would just urge you to get to know them, to get their phone numbers, their e-mail. And if you need to talk to them about something, please contact them.

And I would just thank you for being here

tonight, and we're going to start the program. our first two speakers are going to be Paul Piciulo, who is the Director of the New York State Energy Research and Development Authority, NYSERDA -- I think you'll probably be hearing that a lot. He's the Director of the West Valley Site Management Program. He's been with NYSERDA since 1991. And I'll ask Paul to come up, do his presentation, and then we'll have Alice from the Department of Energy. Okay? Alice Williams. MR. PICIULO: Thanks, Chip. Hi, Welcome. And I guess to kick off a pretty everybody. good series of presentations, and I hope it's very informative to everyone. Kind of a goal that I was -- what we want to do, as Chip said, is to give you an idea of what NYSERDA's roles and responsibilities are at West Valley. And the picture here gives you an idea of the 3,300-acre site that's owned by New York State. NYSERDA holds the title on behalf of the State, holds the title to that property. Can you change it? Looks like that. (Laughter.) It's bigger now, and it's smaller. (Laughter.)

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Any questions?

(Laughter.)

What the next slide is going to show is a map view of the 3,300-acre site. This is the NYSERDA-owned property boundary. There are two major things that go on at this site -- the West Valley demonstration project, okay, which DOE has a lead role, and Alice Williams will talk to you in more detail about DOE's roles and responsibilities for the demonstration project.

NYSERDA's responsibility in the demonstration project is to be a partner with DOE. We pay 10 percent of the cost of the project. We have some working relationships with DOE to provide consultation and advice from what New York State's point of view is on the project and what's going on.

The other major activity is a shutdown low-level waste disposal site, the state-licensed disposal area, and NYSERDA has 100 percent responsibility for the day-to-day management and monitoring of that site and responsibility for the closure of that site.

One other point that -- and you'll hear it a lot through I think the -- through tonight, this 3,300-acre site is under license with the Nuclear

Regulatory Commission, except for this little island in the middle, this little island of the state-licensed disposal area, which I'll explain later is permitted with New York State DEC.

So NYSERDA is the owner on that license, and currently that license is held in abeyance. And we'll talk a little bit about that on the next slide.

I have a little bit of history, kind of the saying goes, if you -- in order to know where you're going, you need to understand where you've been. And, basically, how did this site get here? In 1966 -- or '62 to '66, Nuclear Fuel Services, under contract, it had a license with NRC, constructed the facility.

This was all part of the -- at the time the Atoms for Peace Program, and the Government had incentives to try to get the bad guys of the nuclear fuel process to get that commercialized. And NFS started to build that. Between '66 and '72, they processed over 640 metric tons, which is a lot of waste, and it came from federal sources and some came from commercial sources.

In 1972, NFS shut the operation down to make some modifications, to expand -- they weren't making enough money at the rate they were going. If

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they made it bigger, they'd make more money -- and to deal with some of the change in regulations at the time.

That became too costly for them to do that, and so they decided to withdraw from this business. And at the same time, in the late '70s -- and I can see a lot of us remember the '70s -- the government was concerned about a nuclear proliferation. And so the government was looking at putting -- shutting down or not doing any more nuclear fuel reprocessing -- better way to control this.

So NFS wanted to get out of the business, because it was going to be too costly. They weren't going to be able to do it anyway, legally, in this country. And they told New York that they were going to turn the site back over to New York when their lease expired in 1980 or '81.

So with that, there was a series of studies. Well, what do you do about this? There were 600,000 gallons of high-level waste on the site. There's disposal areas with spent nuclear fuel buried. There's contamination on the surface of the property. Through a whole series of actions -- by 1980, President Carter signed the West Valley Demonstration Project Act, and that's what got the West Valley

demonstration project going.

and two things happened in 1981 -- we entered into a cooperative agreement with the Department of Energy as to how that project would be carried out. And the NRC, which by that time it went from the Atomic Energy Commission to the Nuclear Regulatory Commission, they put our license in abeyance and it's been in abeyance since that time in order for the Department of Energy to come on and do or complete the West Valley demonstration project. And I also will tell you about that in a minute.

I have one more piece to give you a little bit more detail on our responsibilities for the state-licensed disposal area. While NFS was building the facility, between '62 and '66, they said let's start doing some work and making some money, and they decided to get into the low-level waste disposal business.

And they constructed a low-level waste disposal facility that operated from 1963 to 1975, and it received waste -- some waste from the reprocessing facility, some waste from other areas, reactors, federal facilities, hospitals, universities -- for disposal there.

It's not part of the demonstration

project. It was shut down in '75. DOE came onsite, as I said before, in 1981. NFS was still onsite, still managing the SDA, and, in 1983, NYSERDA took over -- assumed the regulatory responsibility for the SDA, and we have that.

Who our regulators are -- we have a radioactive materials license, just to possess radioactive material and to provide safety -- the safety regulations for our workers, and that's with the New York State Department of Labor.

The New York State Department of Environmental Conservation, who you will hear from later, they hold the major permits for our monitoring and maintenance program right now, the Part 380 program. We have RCRA permits for hazardous waste that is stored onsite, a consent order for some of the actions that we've taken.

The picture shows the polymer cover that we put on. It was put on to help manage water infiltration which had been a problem for the site, and that's why we shut down.

It's with New York State DEC that we'll, you know, have to work out the long-term management closure of that facility. They will play a major role in that, and that will be with us.

1 So with that, I want to conclude. The 2 only thing I want to say about tonight is that this is 3 really a great occasion, those that are here. 4 great that the policy statement is final, and NRC is 5 here to talk about it. But even bigger is that the NRC and EPA, 6 7 NYSDEC, and Department of Health have gotten together to kind of help outline, what are all the requirements 8 9 for closing facilities? Because there are a number, 10 and you'll see that tonight. So I want to thank 11 everybody, thank them all for being here. 12 And one last item of just format, as Chip said, for comments -- we have some comments, and my 13 14 staff will probably make comments, or myself, during 15 the conversation part, but we have submitted them and they're on the table to be entered into the record. 16 17 So wit that, thank you, Chip. MR. CAMERON: Okay. Thank you very much, 18 19 And as I mentioned, we will be bringing Paul 20 and Alice back later on in the evening for general 21 question and answer. 22 And now it is my pleasure to introduce 23 Alice Williams of the Department of Energy. Alice is 24 the Director of the West Valley Demonstration Project.

She has been here for about a year and a half.

1 before she came to West Valley she was at the 2 Department of Energy's Idaho Operations Office, and 3 there she was responsible for a variety of things, 4 including high-level waste management, spent fuel 5 transportation, shipments, and also environmental restoration generally. 6 7 And, Alice, I'll just turn it over to you. 8 MS. WILLIAMS: Thank you, Chip. 9 everybody hear Let's see, can me? 10 Especially the transcriptionist. 11 What I will say tonight is very brief. 12 And for those of you who've joined us in the previous meetings for the last two days, you've probably heard 13 14 bits and pieces of this all over the place, but bear 15 with me as I say everything in one timeframe here this 16 evening. 17 As Paul mentioned, this site is owned by the State of New York. And in my perspective, the 18 19 West Valley demonstration project, which was signed in 20 1980, is a very, very unique piece of legislation from 21 the Department's point of view. And it is very 22 specific as to what the Department is going to be 23 doing and what we have been doing for the past 20-some 24 odd years.

First of all, the Act tells us that we

will solidify high-level radioactive waste, and that's part of the mission that is just about completed. We have a few months more to go on that.

We are to develop containers suitable for permanent disposal, and, obviously, that had to be done before we poured the high-level waste into those canisters. We are to transport the solidified waste to a permanent federal repository, and, when there is a federal repository that is open, indeed, that will be something we do.

We are to dispose of the low-level radioactive waste that we have actually made in the process of getting rid of the high-level waste, and we have had some successful disposal campaigns of that so far and are committed to disposing of all that waste off-site.

And, finally, we are to decontaminate and decommission the tanks and the facilities and the other things that we've used in the process of the decommissioning.

Now, because this Act was so unique, and because, as we've all said for the past two days, the West Valley demonstration project is, in and of itself, sort of a one-of-a-kind thing, we had to figure out how we were going to implement the Act.

And that took about a year after the Act was first signed.

And we entered into a cooperative agreement between DOE and NYSERDA that essentially said how we would work things together with the two entities. There was a supplemental agreement that was then executed in '91 that addressed predominantly the EIS activities.

As Paul mentioned, the NRC license was amended, and that went into abeyance so that the Department could come onsite and do some work that the Act told us that we needed to do. And another important part is is that 90 percent of this is funded by the Federal Government; 10 percent by the part of the state.

And also it's not important to this particular audience, there is something I do want to stress here. And sometimes people think that the 10 percent that the State of New York pays is in-kind, and that is not the case. It is a very careful accounting, and it is something where absolutely the State of New York does pay 10 percent of this project.

In '91, DOE and the NRC signed a Memorandum -- I'm sorry. Did I say '91? If I did, I meant to say 1981. The NRC and DOE signed a

1 Memorandum of Understanding to outline respective 2 responsibilities. 3 And I'll talk about this in the next 4 slide, but this was necessary because this was a new 5 kind of relationship between the Federal Government and the NRC because we were not a licensee, and they 6 7 are not exactly our regulator. In 1982, DOE assumed control of 8 reprocessing facilities, and the contractor for the 9 project was WVNS, and they have remained a partner in 10 11 this contract since those beginning days. 12 Now, I mentioned I wanted to spend a little bit of time about Memorandum 13 that 14 Understanding with the NRC. First of all, 15 Region I, and that's the region that is out of Queen of Prussia -- or King of Prussia, Pennsylvania, 16 provides quarterly -- it wasn't that funny. 17 (Laughter.) 18 The record should show King of Prussia, 19 20 please. 21 (Laughter.) 22 The NRC provides quarterly monitoring 23 Now, and the reason they are monitoring visits. 24 visits is because, as I mentioned, this is not a licensee-regulator relationship. And those quarterly 25

1 monitoring visits have been very, very helpful to the 2 project. 3 In many ways, they are conducted like an 4 inspection, but the NRC cannot levy fines or write 5 violations against us. But it is still a very much evaluated process for it. 6 7 In 1991, NRC became a cooperating agency in the EIS process. And, again, that is something 8 9 that is very important to us. And one of the things that the Act was 10 11 very specific about was -- and I'm going to read this 12 verbatim -- that "In accordance with such requirements Commission prescribe," 13 may 14 requirements are what it is that we must decommission 15 the project to. criteria defined 16 And those were 17 February 1st of 2002, and is essentially what we've been about here for the last two days as the NRC has 18 worked with us and the stakeholders about what those 19 20 criteria are. 21 Now, moving on to a little bit about how 22 we are regulated, and I'm going to walk through these 23 just the way regulators do, and that's air, water, and 24 waste.

First of all, with regards to air, the

radiological emissions from the site are regulated through EPA. And the toxic air emissions -- those are the emissions that are what we call non-rad or non-radiological -- are regulated through the New York State Department of Environmental Conservation, which I from now on will just talk to about as NYSDEC.

Water -- the storm water and the non-radiological point source discharges to surface water -- our regulator is NYSDEC. And the wetlands, Army Corps of Engineers in conjunction with NYSDEC. And drinking water is Department of Health, New York State.

On the waste side, we have solid waste, which is the non-radiological waste, hazardous waste, and then the mixed radiological waste. With regards to solid waste, DEC. And then, with the radiological hazardous waste, or, as I said just a minute ago, the mixed waste, the treatment and storage and disposal is regulated through the EPA program, which has been delegated to NYSDEC.

And with that, we talked about the Resource Conservation and Recovery Act, or RCRA for short, corrective action order. And also, the Federal Facilities Compliance Act consent order for the mixed waste treatment.

Now, we also have our own DOE orders, as we have taken over operational control of the site, which was part of the Act. We comply with all of the DOE orders, and that includes the series for radiological waste management operations as well as the environmental safety and health and quality assurance.

And with regards to these, we have a -- we are required to have an environmental monitoring program. That has been going on since our very beginning here, and we have over 20 years of data in our environmental reports. And we continue not only correcting but evaluating that.

In closing, I want to talk a little bit about the project completion. Clearly, nobody is going to argue the fact that a great deal has been done here, and we have been very, very successful with being able to solidify the high-level waste.

However, we still have some things to do at the project. There is decontamination that is ongoing, and that must continue. And also, as I talked about earlier, we have a great deal of low-level and transuranic waste that must be disposed of offsite.

Regulatory involvement is absolutely

1 essential, and that -- some of these interfaces are 2 unique, but that is something that we are committed to 3 make work because it is our job to see that we comply 4 with all aspects of the Act. 5 And with that, I will close my comments and turn it back to Chip. 6 7 MR. CAMERON: Okay. Thank you very much, Alice. 8 Our next set of speakers -- and then we 9 will be going out to you for discussion -- are from 10 11 the Nuclear Regulatory Commission, and we're first 12 going to hear from Larry Camper. the Branch Chief 13 Larry is the 14 Decommissioning Branch in our Office of Nuclear 15 Materials Safety and Safeguards, and Larry's branch, his group of people, is responsible for the evaluation 16 17 of all decommissioning activities at the NRC. before that, Larry was branch chief in the regulation 18 of industrial and medical uses. 19 And after Larry is done talking about NRC 20 21 responsibilities generally, we're going to go to Chad 22 Glenn, who I'll introduce now, who is on Larry's 23 staff. He is the Project Manager for West Valley for 24 the NRC, and before that he was one of the NRC's

onsite representatives at the Yucca Mountain site in

Nevada.

And they will be assisted in the question and answer by their legal counsel, Jim Lieberman.

Larry?

MR. CAMPER: Thank you, Chip.

Good evening. Good turnout. Glad to see that. This is the third meeting since last night in our meeting marathon. Many of you were at those meetings. Some of you were not. For those of you who have heard a lot of what we're going to be saying, bear with us. For those of you who have not, hopefully it will be something that you'll find interesting and knew.

Last evening we did meet with the Citizen
Task Force to explain our decommissioning criteria set
forth in the policy statement, the final policy
statement, and to answer the questions that the CTF
had.

This morning we met here with DOE, NYSERDA, and the other regulators involved with the site, to discuss what we heard last night, what were the lessons learned, what were the things that we heard the first time, or things we wanted to talk about more as regulators, and we spent a lot of time focusing upon the path forward, what comes next.

I want to draw your attention to the displays around the room. There are several; the NRC has several here. And particularly what I want to point out is that we have over here an example of a site being decommissioned. NRC does a decommissioning. have We 30 materials undergoing decommissioning. We have four fuel cycle sites undergoing decommissioning. We have 17 power reactors. So there's a lot of decommissioning going

So there's a lot of decommissioning going on, and I think it's important for you, the public, to know that. We have a great deal of experience in decommissioning, and we will bring that experience to bear at West Valley.

You're going to hear some acronyms used tonight in our presentations. I apologize for that. As scientists and technical folks, we have a tendency to do that. But we did provide a list of the acronyms for you. So if it becomes too much, you can go get the list and get some relief.

Next slide, please.

So what are our goals for this evening?
We have three primary goals. I want to explain NRC's
roles and responsibilities for the site as a
regulator, which we summarized in the regulator's

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communications plan that was published the 27th of March of this year.

I want to explain and clarify the final policy statement, which was published on the 1st of February of this year. And, above all, I want to address your concerns and questions and do the best we can to clarify the contents of that policy statement.

You've heard a brief explanation by Alice and Paul of the roles and responsibilities of DOE and NYSERDA for this site. You're now going to hear about the NRC roles and responsibilities for the site. And then later you're going to hear from the other regulators, the other New York State regulators, and the EPA regarding their roles and responsibilities.

And hopefully, as Chip indicated earlier, when it's all said and done, you'll have a pretty good perspective of our various roles and responsibilities, sort of a holistic viewpoint of the site if you will.

I want to make a brief comment about the regulator's communications plan. We did put that out recently. It is available on our web page at NRC. And what we attempted to do in that regulator's communications plan is to set forth in a snapshot, in a hopefully easy way to read, the various roles and responsibilities that we have.

That plan contains a matrix that identifies our expectations that are in front of us for the site, and we hope that that will aid DOE and NYSERDA and members of the public in understanding what our expectations are for that site.

It is not a consensus document, because we have different laws and statutes that we operate

have different laws and statutes that we operate under. But it does set forth those things which we agree upon in principle, and it sets forth our specific requirements. So if you haven't seen it, I would draw your attention to it. It's a very useful document.

Next slide, please.

So what are NRC's roles and responsibilities at West Valley? They derive from three different laws -- the Atomic Energy Act of 1954. In this Act, the NRC has a broad spectrum of responsibilities as an independent regulatory agency.

With regards to this site, the AEC, and then the NRC, issued a license to NFS to reprocess spent nuclear fuel. As Paul mentioned in his comments, the site operated from 1966 to 1980. That's a 10 CFR Part 50 license.

The license was suspended. It was put into abeyance to allow DOE to carry out its

responsibilities in executing the West Valley Demonstration Project Act. NYSERDA now holds that suspended license. We have continued to carry out our inspection activities at the site through relationship interaction with the Department Energy.

Following completion of the West Valley demonstration project, that license will be reactivated. Should NYSERDA choose to terminate that license in due course, then the NRC would review the termination documents submitted by NYSERDA and conduct a separate environmental review to determine if that termination process satisfies the decommissioning criteria in our license termination work.

Next slide, please.

The second act is the West Valley Demonstration Project Act. We have four key functions under that Act. First, is to prescribe the decommissioning criteria for the site. We've done that in the policy statement, which you're going to hear more about in a few minutes.

We review and consult with the Department of Energy on their various activities and plans for the site. We monitor the activities of DOE. We conduct special activities, as we would for any other

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-- if it were a licensee involved, and we do this through the agreement that Alice cited in her comments.

And then, finally, NRC is charged with determining that the preferred alternative meets the decommissioning criteria as set forth in our policy statement. And the preferred alternative will be articulated in the environmental impact statement that DOE has the lead in preparing and that NYSERDA the NRC and the EPA are cooperating agencies on.

Next slide, please.

The third role is the National Environmental Policy Act called NEPA. cooperating agency for the environmental statement on the decommissioning at the site. There environmental impact statements developed there, one dealing with waste management and one dealing with decommissioning. That was referred to as EIS number 2. We're a cooperating agency on that environmental impact statement.

We ensure that the decommissioning criteria and the solutions to the decommissioning for the site are subject to an adequate environmental analysis.

The license termination rule, which is

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being brought to bear at this site by the NRC, included a generic environmental impact statement before the Act was put into place in 1996. In the course of conducting that environmental impact statement, the generic environmental impact statement, we did evaluate a number of complex sites, such as nuclear power reactors and fuel cycle facilities. And we believe what we learned and what we conducted in that GEIS has application at the site for West Valley.

The proposed alternatives to decommission West Valley will undergo a site-specific analysis. You're going to hear us talk several times about the ongoing development of an environmental impact statement, which we are a cooperating agency for. So I want you to understand that we have the generic environmental impact statement associated with the license termination rule itself, and a site-specific analysis that's going on at the West Valley site.

Termination of the NRC license by NYSERDA will undergo an environmental review. What we're trying to do, though, to be efficient is to maximize the opportunities, to link the environmental impact statement that's being developed right now, that NYSERDA is a party to as a cooperating agency, and the effort that NYSERDA will ultimately bring to bear

should it decide to terminate the license.

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We spent a lot of time talking about that in our meeting this morning, and we think that's a very efficient thing to do. The NRC believes that we can rely upon the environmental impact statement that's being developed right now in reaching our decision. But should we reach a conclusion that we can't do that, we have the authority -- and could do -- our own environmental impact statement. We would prefer not to do that, simply in the interest of time, efficiency, and cost.

Next slide, please.

Interfacing with stakeholders is an important function at any site. Public outreach is an important function at any site undergoing decommissioning, and West Valley is certainly no exception to that rule.

We need to be aware as regulators of the concerns and the issues that you as stakeholders have. All of you are stakeholders. The regulators are stakeholders. The citizens who live here are stakeholders. DOE and NYSERDA, we're all stakeholders. We want to be aware of your concerns to the extent that we can, and as practical to address them.

1 The EIS will be key vehicle in 2 addressing your concerns. will afford Ιt an 3 opportunity for public comment, and it will be an 4 excellent opportunity for you to weigh 5 stakeholders in the ultimate outcome of how the site is decommissioned as set forth in the environmental 6 7 impact statement and the preferred alternative. Next slide, please. 8 NRC has four performance goals which are 9 10 embodied within our mission statement and our plan. 11 They maintain safety; increase public are to 12 confidence; make efficient, effective, and realistic decisions; and reduce unnecessary regulatory burden. 13 14 I want to emphasize that we take these four program 15 goals very seriously. We are driven by these principles as an 16 17 independent regulator. And we will strive to bring each and every one of them to bear as we carry out our 18 19 responsibilities for the decommissioning of West 20 Valley. 21 All four are important, but none is more

important than maintaining safety. It's our mission, it's what we're about, and I want to assure you we take it very, very seriously.

Next slide, please.

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Now, regarding the decommissioning criteria itself, we've had several key events along the way as we developed the policy statement. The first was a Commission public meeting that took place in January of 1999. It was a public meeting of the Commission in which the staff briefed the Commission on the then draft policy statement. DOE and NYSERDA, as well as representatives of the Citizen Task Force, participated in that public Commission meeting.

We then published the draft policy statement in December of 1999. Twenty-eight organizations or individuals provided comments on the draft policy statement. There were more than 200 comments provided on the draft policy statement. Reaction was generally favorable, but there were some concerns expressed, of course.

We then held a meeting at this same site in January of 2000 to discuss with you and present the draft policy statement. I recall it being a lengthy, lively at times, meeting, and a very constructive meeting -- so constructive, in fact, that we took home a very clear message from the participants that night, that you wanted more time to comment on the draft policy statement.

As a result of that, we took that message

back to the Commission, and the Commission did, in fact, extend the public comment period time.

The final policy statement, which we're here to talk to you about tonight, that was published on the 1st of February, continues to prescribe the license termination rule as the decommissioning criteria for the West Valley site. It addresses the waste incidental to reprocessing issue. And, in fact, this is, as Alice pointed out, a unique and complex site.

Next slide, please.

So now that we have a final policy statement, it's about implementing that policy statement. Our expectation is that DOE and, in turn, NYSERDA will do everything that is economically and technically feasible to clean up the site and meet the dose standards of the license termination rule.

The environmental impact statement will need to be a comprehensive document considering the various alternatives for the site, and ultimately explain or justify the preferred alternative and how it, in fact, meets the criteria in the final policy statement.

Make no doubt about it -- we do face challenges at this site. Meeting the dose standard,

partial site release is a possibility at this site, and possible continuation of the license at that site is a possibility.

The final policy statement prescribed in the LTR, as I said, while recognizing the complexity of the West Valley site -- and that flexibility may be needed to determine a practical solution to the site while ensuring that public health and safety is met.

I'd like to ask us to avoid speculation, and by that I mean guessing what the outline will be, jumping to the conclusion that the flexibility allowed by the policy statement will, in fact, be necessary at this site. We now have the final policy statement that prescribes the license termination rule as a dose standard at this site.

DOE has indicated to us that they are committed to meeting that dose standard. But we now need to let the process play out. The environmental impact statement in the development of alternatives is where we should now focus our efforts, all of us, you the stakeholders, the Citizen Task Force, us as regulators and responsible parties for remediating this site. That is where we can make the most progress as we move forward.

Next slide, please.

As we move toward a discussion of the license termination rule and the policy statement for West Valley, I want to clarify a few concepts that are set forth in the license termination rule. Chad and I discussed this, and we think it will make his presentation easier as he presents some of the concepts set forth in the policy statement.

First, I want to point out that the license termination rule is a risk-informed performance-based rule that sets forth a range of dose criteria to be brought to bear. It contains a dose standard -- in this case, 25 millirem and ALARA -- that is designed to protect public health and safety.

There are three possibilities that exist within the license termination rule -- the first being unrestricted release to a dose standard of 25 millirem and ALARA -- ALARA meaning as low as reasonably achievable. There is a restricted release pathway, in which institutional controls are in place to ensure that that dose standard is met and maintained.

Again, the dose standard for restricted release is 25 millirem and ALARA. However, it has a provision that should those institutional controls fail, should the fences and the security monitoring and the other things that are put in place to control

access to the site to prevent intruders from coming into the site, should all of them fail, safety caps require that the dose not exceed 100 millirem, and under certain conditions 500 millirem.

The third pathway is an alternate criteria pathway. The alternate criteria pathway allows for a dose possibility of on the order of 100 millirem, not unlikely to exceed 100 millirem, and it requires approval by the Commission, coordination with the EPA, and public participation should that pathway be pursued.

Any other flexibility that might be necessary for any site undergoing decommissioning criteria following the license termination rule will be subject to the same scrutiny as the alternate criteria pathway.

Next slide, please.

License termination rule is designed to protect a critically exposed individual. It requires 25 millirem total effective dose equivalent. It's got to be an average member of a critically exposed group. All pathways must be considered. And the period of performance in the license termination rule is 1,000 years.

Now, what's a millirem? What does that

mean? A millirem is a unit of radiation exposure that considers biological effect, the impact it might have on our body. It -- as far as the critically exposed person is concerned, we use a very conservative scenario.

The most conservative scenario in our guidance is what we call the resident farmer scenario. Literally, someone would come on to a site after it has been decommissioned and the license has been terminated.

They would build a house, dig a basement, grow a garden, eat the crops, drink the water, and from all possible pathways of ingestion -- inhalation of dust, drinking the water, eating the food -- all of those pathways considered, over a period of 1,000 years, the licensee -- or in this case DOE and NYSERDA -- must demonstrate that the dose criteria was not exceeded. A very, very conservative approach designed to ensure a substantial degree of public health and safety.

Next slide, please.

Well, how much is 25 millirem? I mean, let's try to put this into perspective. Depending upon where you live in the United States, the background radiation ranges between about 200 and 400

millirem -- 200 to 400 millirem per year background radiation.

If you look in our regulations at Part 20, they require that no member of the public can receive more than 100 millirem from an operating facility, from a currently licensed facility. If you get in an airplane and you fly across the United States from New York to Los Angeles, you'll pick up about three to four millirem of exposure.

If you go get a chest X-ray, which most of us do occasionally as part of our physicals, you'll pick up about 20 millirem of exposure to the chest area. And the X-ray being passed through your body, you'll pick up about eight millirem whole body exposure.

Next slide, please.

And then, finally trying to begin to put it into perspective, radiation is all around us. It's part of life. We contain radiation ourselves. Radon gas, we've heard a lot about radon gas in the last few years, some numbers are presented. Terrestrial radiation, internal radiation is about 30 millirem per year because of the trace levels of radionuclides in our body. Of course, medical procedures, we all have those from time to time.

1 And I hope that by seeing these numbers 2 and seeing these other sources of exposures it will put it at least into a reasonable context what we mean 3 4 when we talk about 25 millirem and ALARA. 5 The dose standard in the license termination rule and, therefore, prescribed in the 6 7 policy statement recognizes that there may be other pathways of exposure, and that's why the conservative 8 values were chosen in the license termination rule and 9 in the policy statement. 10 11 I'd like to conclude my comments by 12 picking up on a point that Paul made in his remarks. We believe that we are now in a significant milestone 13 14 in the process of decommissioning this site. We now 15 have the regulatory infrastructure that DOE and NYSERDA need to proceed to continue their work. 16 17 The regulatory infrastructure is contained in the policy statement, which was published recently 18 19 and we're going to be telling you about -- more about 20 in a moment, and in the contents of the regulator's 21 communications plan, which sets forth our expectation. 22 I don't think there's any question now about what the regulatory expectations are for the site. 23

and to continue to make progress. We talked a lot in

And I want to encourage us to look ahead

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1	our meeting this morning about what comes next, and I
2	want to encourage all of us, and particularly the
3	members of the Citizen Task Force, particularly the
4	local stakeholders, to focus our attentions on the
5	steps that the regulatory agencies and DOE and NYSERDA
6	will be taking next, and, in particular, on the
7	development of the environmental impact statement and
8	your opportunity to comment on it.
9	I appreciate your attention, and will look
10	forward later to answering your questions.
11	Thank you.
12	MR. CAMERON: Thanks, Larry.
13	Let's complete the NRC picture with a
14	presentation by Chad Glenn on the NRC's policy
15	statement, and then we'll go out and hear from you.
16	MR. GLENN: My name is Chad Glenn. I work
17	for the NRC in the Decommissioning Branch. Thanks for
18	coming tonight. Appreciate your time.
19	What I'd like to talk about tonight is the
20	Commission's final policy statement on decommissioning
21	criteria for the West Valley demonstration project.
22	Next slide, please.
23	I'm going to touch on the license
24	termination rule, the decommissioning criteria for the
25	West Valley demonstration project, as well as the rest

1 of the site. 2 I'm going to talk a little bit about 3 incidental waste, touch on previously authorized 4 burials at the site, and then talk about some 5 environmental analyses. Next slide, please. 6 7 The license termination rule is NRC's standard decommissioning criteria for terminating all 8 Whether they be reactors, fuel cycle 9 NRC licenses. facilities, this is our criteria. 10 11 As Larry noted, the license termination 12 rule provides a range of release criteria. There's release criteria for unrestricted release of a site as 13 14 well as for restricted release of a site. 15 Next slide, please. The obligation of the license termination 16 17 rule to the West Valley demonstration project will be 18 two-step process. The first step, NRC has 19 prescribed --20 (Whereupon, at 7:55 p.m., a power outage 21 occurred.) 22 MR. GLENN: The application of the license 23 termination rule for the West Valley demonstration

first step is to prescribe the license termination

project, as we said, was a two-step process.

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rule as to decommissioning criteria, and the second step is the NRC will independently evaluate the decommissioning EIS to make a determination of whether the preferred alternative satisfies the license termination rule.

I think it's important to note tonight that the license termination rule is the decommissioning criterion for both the West Valley demonstration project as well as the rest of the site.

The West Valley Demonstration Project Act specifies that the NRC criteria will be used to decommission the high-level waste tanks, as well as the facilities for the solidification of high-level waste, and material and hardware used in connection with the West Valley project.

But the license termination rule also applies to the remainder of the site. It applies to the -- it is the decommissioning criteria for the NRC license disposal area. There's a couple of -- there's a map in the back that has these disposal areas. And adjacent to the NRC license disposal area is the state license disposal area.

The state license disposal area is regulated by the State of New York. They have jurisdiction over that disposal area. In the policy

statement, the Commission has said that it believes that the -- both the NRC license disposal area and the state license disposal area should be decommissioned to the same standard, that being the license termination rule, in a coordinated manner.

The Commission believes that the early resolution of the incidental waste criteria is important to this project for decommissioning to proceed. Incidental waste is that material left in the tanks after the high-level waste has been vitrified or taken out of the tanks, removed from the tanks.

Therefore, the Commission has provided two criteria for incidental waste. First, that the radionuclides would be removed to the maximum extent technically and economically practical. And, second, that the waste will be managed as low-level waste.

Resulting calculated doses from incidental waste should be integrated with all other doses on the site, and the impacts of incidental waste should be evaluated in the decommissioning EIS.

I talked a little bit about previously authorized burials. In 1997, when the Commission approved the license termination rule, it required an analysis of site-specific impacts and costs in

1 deciding whether or not to remove previously-buried 2 The NDA contained previously waste at sites. authorized buried waste. 3 4 So the decommissioning EIS will need to 5 evaluate the impacts and the costs of deciding whether or not those wastes should -- the dispositioning of 6 7 those wastes. As others have said, the West Valley site 8 is a -- the decommissioning of this site is going to 9 be complex and challenging. It's different from any 10 11 other NRC decommissioning facility. In the policy 12 statement, the Commission states that it expects all parts of the site to be decommissioned to the maximum 13 14 extent technically and economically practical. 15 They also say this applies to any part of the site that remains under license. 16 17 standard applies. Determination of an NRC license will only 18 19 happen if the Commission is assured that public health 20 and safety is intact and maintained. 21 In terms of environmental analyses, the 22 LTR does not establish new criteria. The impacts of applying the license termination rule have been 23 24 previously evaluated. The LTR calls for a site-

specific decommissioning decision.

1	The DOE/NYSERDA environmental impact
2	statement will evaluate the various different
3	decommissioning alternatives, and they will evaluate
4	impacts beyond 1,000 years. NRC will be using this
5	DOE/NYSERDA environmental impact statement, relying on
6	it to make an independent judgment as to whether or
7	not the preferred alternative in that document
8	satisfies the license termination rule.
9	That concludes my talk.
10	Chip, I'll turn it back over to you.
11	MR. CAMERON: Okay. I guess there is a
12	general power outage in the neighborhood here,
13	undetermined why, but I just want to assure you that
14	things are safe here. There's no emergency going on.
15	So what I'd like to do, if you don't mind
16	sitting in sort of semi-darkness, is perhaps to
17	continue with the meeting and hope for that this is
18	not a metaphor for the cleanup of the site.
19	(Laughter.)
20	Why don't we go out to you for comments.
21	Are you able to pick this up?
22	THE COURT REPORTER: Yes.
23	MR. CAMERON: Okay. You've heard a lot of
24	material from the NRC. Are there questions/comments
25	on the NRC presentation? Yes, sir. And if you could

1	just give us your name for the transcript, too,
2	please.
3	MR. TRIFIELD: Ivan Trifield.
4	MR. CAMERON: Okay.
5	MR. TRIFIELD: What's going to be the
6	budgetary we have a budget in the government. How
7	will that affect the cleanup?
8	MR. CAMERON: Good question. Larry, do
9	you want to address budgetary
10	MR. CAMPER: Could you repeat the
11	question?
12	MR. CAMERON: implications. In other
13	words, what are the implications for the cleanup of
14	the site from any possible government budgetary
15	decreases? It may be a more relevant question for
16	later on in terms of the Department and NYSERDA. But
17	perhaps you could say something about that now, and
18	we'll come back and make sure we answer it in full
19	later. Larry?
20	MR. CAMPER: Yes. Well, in terms of the
21	decommissioning criteria that we are imposing on the
22	site through the policy statement, the decommissioning
23	standard is blind, if you will, to moderations or
24	adjustments in funding.
25	It sets forth a safety standard that is

1 expected to be met. And it is blind to budget 2 considerations, as it should be. I think in terms of what any budgetary cuts might mean in real terms at 3 4 this site I think that clearly Alice would be better 5 positioned to answer that question than I would be. MR. CAMERON: And what I'd like to do is 6 7 to make sure that we hear the material from the -that you hear the material from the other regulators. 8 Let's hold for a final answer on that question until 9 we get done with the next panel. Okay? But we will 10 11 come back to that, sir. Other questions? Yes, Ray. 12 MR. VAUGHN: Ray Vaughn, CTF and 13 Yes. 14 West Valley Coalition. I've got a question for 15 perhaps Larry or Jim Lieberman. Can you tell us exactly what the information about incidental waste in 16 17 the license termination rule -- in other words, the final policy statement -- consists of? 18 19 Is it an authorization being granted by 20 NRC to DOE to reclassify certain waste as incidental? 21 Is it simply some friendly advice that DOE might want 22 to go ahead and do so without -- can you give us a 23 clear statement of exactly what that information on 24 incidental waste is from a legal standpoint?

Great.

Larry?

MR. CAMERON:

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Who

Jim?

1 start off on that one? And did you 2 understand the question? 3 MR. LIEBERMAN: Yes, I did. 4 MR. CAMERON: All right. 5 MR. LIEBERMAN: The Commission is establishing criteria under the West Valley Project 6 7 Demonstration Act as the license termination rule. That addresses residual material which is left at a 8 site when the license is terminated. DOE is required 9 to remove high-level waste from the site. 10 11 There has been a long-standing concept 12 since the late '60s that certain material, which would be otherwise characterized as high-level waste, can be 13 14 treated as low-level waste and not need to be disposed 15 of in a deep geologic repository. And that material we've described as waste incidental to reprocessing or 16 incidental waste. 17 The Commission, in the policy statement, 18 19 is providing its views to the Department as to what 20 material needs to be removed such that the remaining 21 material can be subject to the license termination 22 rule. 23 It's really a two-pronged approach the 24 Commission is adopting in the discussion of incidental

First, from a safety point of view as to what

waste.

1 type material would qualify as low-level waste, that's 2 meeting the performance objectives of what we call 3 Part 61, which is the low-level siting regulation 4 requirements dealing with public dose, dose to 5 workers, dose to the intruder, stability of the site. Once that's met, then as Chad and Larry 6 7 that dose said, is integrated with the license termination rule dose so that overall the Commission 8 9 will be satisfied that there's protection by having that material left at the site. 10 11 Okay. MR. CAMERON: Do you have a 12 followup on that? MR. VAUGHN: Yes, for -- I want to reask 13 14 the same question. The closest you came to answering 15 my question was you said that NRC is providing its views to the Department. That still is very muddy in 16 17 terms of what you've actually said in the final policy 18 statement. it that you were giving Is 19 authorization that did not formerly exist? 20 MR. LIEBERMAN: We're providing the advice 21 to the Department as to what we think -- what the 22 Commission thinks the criteria should be for dealing 23 with incidental waste. 24 MR. VAUGHN: So advice that calls for the 25 -- calling it an authorization to do something that

did not formerly exist?

MR. LIEBERMAN: Well, it's not an
authorization, but it's not that it didn't formerly
exist. The Commission's view is that incidental waste
is embodied in the Act implicitly in defining high-

MR. CAMERON: Let me ask Larry, Ray, to see if he can put it --

MR. CAMPER: Well, let me try to add to that if I can, Ray. It's clear when you read the policy statement that the Commission recognized that at this site it would be much more effective to step up to the plate and address the possibility of waste incidental to reprocessing.

We understand at this site, if you look at these tanks, that DOE has gone through the process of removing high-level waste, vitrifying that waste, and that in the grids that exist in the bottom of the tank there's a potential for there to be a small residual amount of radioactive waste, something on the order of one percent of what was originally there, perhaps even less when it's all said and done.

And the Commission felt, as they said in the policy statement, that we should step up and deal with this, because the melter is currently running.

level waste.

And when that melter shuts down, the Commission thought it was prudent to deal with this issue now rather than having DOE positioned so they must come back at some time in the future -- and/or NYSERDA -and deal with any residual waste in the bottom of those tanks, and run into an extremely costly and time-consuming scenario. And, therefore, the Commission thought it was prudent to do this. It did that, in part, because of some comments that were raised during the public comment period. Now, it talks about in the policy statement addressing the criteria for waste incidentally to reprocessing, but it does also, as Jim points out, use the word "should." Now, if you want to run that to ground and say "should" isn't advice, you can do that. think what's more important is that the Commission recognize that for this site in that tank this contingency existed and thought it was prudent to step up to the plate and address it in the policy statement. May I just add one quick MR. VAUGHN: followup? MR. CAMERON: Yes, one quick followup, and then I --

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1	MR. VAUGHN: After that did the last
2	comment
3	MR. CAMERON: Mary Ann, did you get that?
4	Did you get Larry's answer?
5	THE COURT REPORTER: Yes.
6	MR. VAUGHN: Yes. Thank you.
7	MR. CAMERON: Okay. And we're operating
8	a little bit in strange circumstances here, because
9	the sun is going to go down.
10	(Laughter.)
11	These lights don't last I guess don't
12	stay on forever. So if they don't fix the problem,
13	we're just a little worried about people being able to
14	get out of here safely.
15	So what I'd like to do while we still have
16	light, in case the lights don't come back on, is to
17	get our panel of three regulators the EPA, U.S.
18	EPA, and the New York agencies up to at least go
19	through their presentations for us. So at least
20	you'll have that information if we do have to quit.
21	And I'm going to ask them to come up, but
22	let's finish with a couple of questions on NRC.
23	Colleen? And please identify yourself for
24	the transcript.
25	MS. GERWITZ: Colleen Gerwitz with

NYSERDA. Following up on the questions Ray was asking, NYSERDA has, through the process of developing the policy statement, has written several letters stating our opinion that NRC must make the determination that waste is incidental to reprocessing at this site because the material was originally licensed by the NRC as opposed to the Department of Energy making that determination with the other facilities that are owned by the Department of Energy that are making under -- their order 445.1.

The policy statement was a bit unclear as to whether NRC is acknowledging that they have the responsibility to make that determination or not. And I guess I was wondering whether you could clarify that.

MR. CAMPER: I think I can, Colleen. When we read the policy statement, I don't think we see that lack of clarity. I think the Commission was I think forthright in pointing out that it felt that it needed to address this question of waste incidental to reprocessing, and I think that's why they -- it did, in fact, articulate their views in the policy statement.

Our sense of what the Commission tried to do, though, was -- on one hand was to step up and deal

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with this issue, prescribe criteria, but at the same
time recognize that going back to 1969 the issue of
incidental waste has been an issue that the Commission
has provided views on. We've advised DOE at the
Hanford site, at the Savannah River site, and
recognizing that DOE has a role of significance at
this site, has, in fact, dealt with incidental waste
and the classifying of it I think tried to find a
way to deal with it from both fronts.
On one hand, addressed the issue,
prescribe a position, a view, and yet on the other
hand recognize following a performance-based approach,
giving DOE advice as to what should constitute waste
incidental to reprocessing. And that's why the word
"should" appears.
So I think it really tried to do both
things.
MS. GERWITZ: So will NRC be approving
waste incidental to reprocessing determinations at
this site or not?
MR. LIEBERMAN: We will, because in the
EIS process when we have to approve or be satisfied
that the preferred alternative meets the LTR, if DOE
chooses to have in their preferred alternative

incidental waste, we will have to make a finding

1 concerning that. And once we make that finding, that finding will be applicable to NYSERDA when NYSERDA 2 gets the license back. 3 4 MR. CAMPER: Ι mean, Colleen, the 5 Commission is explicitly clear on the fact that any dose has to be considered and factored into the total 6 dose contribution from the site. 7 And is Jim is pointing out, the preferred alternative would need to 8 demonstrate that the dose standard is being met. 9 MR. CAMERON: Okay. Let's have one more. 10 11 Is there one more question for NRC? And I'm going to 12 ask Paul Giardina, Paul Merges, and Gary Baker to come up and do their presentations. We can come back to 13 14 this incidental waste question -- hopefully, we've 15 clarified it somewhat -- later on. Let me see if there's anybody else out 16 17 there -- does anybody have a question for the NRC on what they heard? 18 19 Hal, do you want to --Okay. 20 Well, MR. BRODY: just one short 21 followup --22 MR. CAMERON: Go ahead. 23 MR. BRODY: -- same issue. And that is, 24 you've talked historically about the criteria that the 25 NRC has set forth for incidental waste determinations.

In your Hanford determination, you set forth three criteria, the third criteria being that the waste could not exceed Class C criteria that is set forth in Part 61. That criteria did not -- preferred criterion does not appear in your incidental waste criteria for West Valley. I'm wondering why.

MR. LIEBERMAN: That is correct. It doesn't appear, nor did it appear at Savannah River. When the Commission considered the incidental waste issue at Savannah River, they also dropped that criteria. And the reason why they did that is that the Commission is focusing on performance-based --risk-informed performance-based process that --they're focusing on the dose, the protection of the public.

And if the dose levels are met over the 1,000-year term, and more when we consider the NEPR process, the Commission feels that the public will be protected, and, thus, the dose standard is really the key to making the determination.

MR. CAMERON: Okay. Thank you. If we get the lights back on, we'll come back for NRC. But at least I want you to hear the information from the other regulators, and I'd like to ask Paul Giardina from the United States Environmental Protection Agency

1 Paul is the Branch Chief for the come up. 2 Radiation and Indoor Air Branch, and that's EPA Region 3 2 out of New York City. 4 Paul, take it away. MR. GIARDINA: Okay. Thank you very much. 5 This has new meaning. There's no lights on. 6 7 (Laughter.) 8 This is actually such a relief, too, 9 because this would have been Powerpoint 10 presentation. And I'm so challenged with technology 11 that I don't have to worry about it. 12 (Laughter.) What I wanted to do is be brief today, but 13 14 I wanted to start with a chronology of events since 15 EPA's most recent involvement at West Valley. I want 16 to put some perspective here. But before I do that, 17 I want to sort of play to your perception. I'm always reminded of -- whenever I speak in front of people of 18 19 the thoughts of the German philosopher Hagel who said, 20 "The trouble with government is when it comes to 21 history, nobody ever learns from it." 22 And where I want to start is -- well, I 23 want to talk about our last involvement with this

document that was published by the EPA, and it began

I want to jump back to just a very simple

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1 such as the following. 2 It says, in 1973, the New York State 3 Department of Environmental Conservation, New York 4 State DEC, asked the U.S. Environmental Protection 5 Agency for assistance in determining whether radionuclides were migrating from the Nuclear Fuel 6 7 Services' West Valley low-level radioactive waste burial area through subsurface to the surrounding 8 9 environment. 10 That was the first sentence in a report 11 issued in 1977 which gave recommendations to both the 12 DEC and the New York State area on where to go with low-level waste burial and those trenches. 13 14 That report called Summary Report of a 15 Low-Level Radioactive Waste Burial Site at West Valley had several authors, three of which were Jeanette Eng, 16 17 who is my colleague now, and who is smart enough to bring this. 18 19 (Laughter.) 20 Jeanette, I would ask you to stand, but --21 (Laughter.) 22 Michael F. Debonnas, who is literally back 23 in New York running the Radiation and Indoor Air

and myself.

am here,

involvement goes back to 1977, a report in 1977.

Branch while

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1 checked -- the first day Jeanette was on the site was 2 in 1976. I believe the first day I was on the site 3 was in 1975. 4 So if history -- if nobody learns from 5 history, then we're the most historic people. we're determined not to set that precedent. 6 7 So let's go to work here. Back on May 17th, 1999, was -- we really had our last formal 8 9 involvement in this process where we discussed or made And at that point, we really came 10 public record. 11 forward with comments on the development of the EIS. 12 Here we were really concerned that we needed cleanup standards that might be more restrictive than the 25 13 14 millirem per year that had been established by the NRC 15 or that the NRC was using. Subsequent to that, on January 10th, we 16 17 also sent a letter transmitting our comments to the NRC, basically worried that the CERCLA risk range, 18 19 which is one of the things that the EPA uses to 20 measure the acceptability of a site cleanup, would not be met using the 25 millirem or the full -- or our 21 22 Safe Drinking Water Act standards, which is 23 responsibility we'll talk about a little later. 24 Things have changed since that time.

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methodology, their dose calculation methods, as they would be at the site. EPA has come a long way. We have gone through our formal dose calculations as we would apply them to sites such as this under CERCLA.

And lo and behold, some time shortly after those comments, and after we had worked the numbers, we have found that the 25 millirem dose standard that the NRC proposes for all but five radionuclides -- and none of those radionuclides would be driven at the site -- are more conservative, mind you, more conservative than those that would be calculated using the CERCLA risk range.

So, therefore, at that point, it became very clear to EPA -- and I think at the same time the Nuclear Regulatory Commission -- that in May 2000 I sat down at the Conference of Radiation Program Control Directors meeting, with Larry's boss, Mr. John Krieves, and we sat down and decided that it is about time that we codify hopefully all of the federal radiation safety and environmental standards into one usable document, so that an EIS could be developed.

So that there would be no problem, no difficulty, no ambiguity in the yardstick for which we would measure environmental compliance, radiation protection compliance, at this site.

We also knew, and EPA on a regular basis meets with its state counterparts -- the State Department of Environmental Conservation, the State Department of Health -- to discuss program plans. I'm sure the NRC does the same thing, to involve our state counterparts, so that instead of having one group of federal rules we could have one comprehensive set of environmental and radiation protection standards that encompass state and federal circumstances.

So from May 2000 to August 2000, we went to separately discuss with DEC and the Department of Health their thoughts about buying into a process where we would come up with one set of environmental standards. The buy-in was completed quickly, and we decided that we would use the fall of 2000, and we've scheduled a series of three teleconferences, and then to follow up with a meeting, to come to an agreement on how we would proceed and where we would go.

In an unprecedented set of circumstances, we didn't need two of the conference calls and one of the meetings. And one and only conference call basically resulted in an agreement, which has been memorialized, is in the correspondence -- the two letters I talked about before -- and that agreement that came from that conference call are all a matter

of public record. I know we have copies here, though I would advise you probably not to get up and get them right now.

(Laughter.)

Anyway, in May of 2001, the General Accounting Office issued a report which was entitled Agreement Among Agencies Responsible for West Valley is Critically Needed. Well, I'd like to think that we beat them by six months. But, anyway, that report recommended that NRC and EPA, in coordination with the state, needed to agree on how the different regulatory cleanup criteria should be applied to the site.

We had done that in October. Then the real goal for us was to make sure that we could get a roundtable together, explain it to the Department of Energy, and then -- and the New York State Energy Research and Development Authority -- and move forward in assuring that we had signoff by all of our agencies at the highest level. That, through July 23rd, happened -- excuse me, through the fall happened. And I might compliment both New York State Department of Environmental Conservation and Department of Health.

The signoffs of this came and were scheduled to occur during September of 2001, and were done in a timely fashion. In considering the other

circumstances that we were involved with, I think it shows a clear dedication by both state organizations their focus on this project.

On July 23rd, I issued a letter to the Nuclear Regulatory Commission, which is again here, which I think really clarifies and takes a step-by-step approach of where we were with disagreements in our regulatory approaches, how they have been settled through basically a resolution of the technical nature, the models, and the basis of these, and where we have come to an agreement. And, again, that's here.

So, effectively, from July 23rd, 2001, and from a federal perspective, and shortly thereafter in the fall of 2001, we have put together a set of environmental and irradiation protection criteria for which, when met, will achieve a site cleanup that meets all existing environmental rules, regulations, and guidance on protection of the public health and safety.

We have now put that in a regulator's communication plan, which, again, Larry has referenced in previous meetings, I have talked about in previous meetings, and that's the public record. But from here, I think we want to go forward. It's April 17th,

and what we are really looking to do now is to take this document and make the last transition. And that's the last -- the last transition is to get an environmental impact statement together and go forward.

Now, let me tell you what our roles and responsibilities are, because I think now with what we've done with our first steps in this through now, you may get a little better picture of this.

Under the Atomic Energy Act, EPA has one basic role, and that was to establish generally applicable environmental standards for radiation in the environment. We've done that in the area of the uranium fuel cycle, but that clearly does not look at the waste disposal area.

In the Clean Air Act, we have been given the authority to regulate radionuclide emissions to the air through the National Environmental -- or National Emission Standards for Hazardous Air Pollutants. The acronym is the RAD NESHAPs.

Now, back in the late 1980s, this rule basically focused on Department of Energy facilities. It's good to see Dr. Willis Bixby here, because at that time Dr. Bixby was the Director of the West Valley demonstration project, and at that point we

came forward and presented the rule and where we were going with it.

There was some concern whether, since the DOE was simply an operator of the site, whether it applied. EPA made its vision clear I think at that point that we expected compliance at the site with the radionuclide emission rule, and that we believed that the reasonable expectation would be that the site would never ever be within a tenth of that rule.

I think that was a rather strong challenge, and I want to congratulate both the current DOE management, Alice, and Dr. Bixby, back then, because it's always been in full compliance, has always been well less than 10 percent of the dose standard. It's been a model citizen.

But we've regulated the clean air -through the Clean Air Act the radiological emissions
from that site. It's important to realize that the
levels that were controlled were the control -- the
levels that presented the air emissions for all of the
glass melter operations. So it was important to make
sure that we were not turning one pathway into another
environmental problem.

Another responsibility is obviously the Comprehensive Environmental Cleanup Response,

Compensation and Liability Act. This is CERCLA. This is the Superfund rule. And what it basically does is it charges us with responding to releases that are an imminent risk and cleaning up sites that are on the national priority list.

West Valley, while not on the national priority list, still it is our goal to make sure that any other cleanups that are done meet the CERCLA risk range. I've talked about that before. The 25 millirem standard that the NRC is using with ALARA certainly will achieve that.

And it is our vision in the EIS that the EIS will clearly portray both that and will interpret those levels in terms of risk so that the idea of clear compliance with all environmental statutes and all radiation protection statutes will be clear.

And since we are a cooperating agency in the environmental impact statement process -- and that brings us to our other responsibility -- and that's the National Environmental Policy Act. EPA reviews EISs for environmental quality. Or, when we are a cooperating agency, actually participates in the development of that.

That is our role now. We are walking a line as a regulator with regard to the air emissions,

but now we also walk another line and that is in the development of the EIS process, where we'll be a cooperating agency.

I think our vision here is very clear -to develop a preferred alternative that protects the
public health and safety with the environmental
yardsticks that are now out on the table for public
scrutiny. That's our challenge, our goal, and it is
in the DOE's plan to have this done by 2005, and we're
four-square with that. And I know the NRC is foursquare with that.

So as the public, I think your focus now has to be on watching and being part of this process going forward, so that by 2005 preferred alternatives that meet public muster and the environmental muster is together.

Finally, we have some functions under the Resource Conservation and Recovery Act, RCRA. Those have been delegated to the New York State. Safe Drinking Water Act -- we've also delegated that to the state, and we'll maintain oversight. I'm sure our state program, people will talk about that.

I just want to emphasize what our roles are. As a cooperating agency in the development of the decommissioning EIS, we will be four-square

involved in this.

Second of all, we believe that providing early input at West Valley to the public, the regulators, and to DOE and to NYSERDA on environmental standards is a key responsibility. We're going to keep going forward with that. And we're going to keep going forward with our oversight of state delegated programs.

But I want to just challenge you maybe to understand where we're coming from. We've been in this business at West Valley since before DOE was here, and we don't plan on going away. And if you -- we get lights later on, there's a little poster outside that talks about determination. And it says the race isn't always won by the swiftest, but the one who keeps running.

to keep running to the end. We are going to prod the process so it runs to 2005 in a timely fashion, and I've already had discussions with Alice and Paul about assuring that focus.

We are going to meet next month to get this process going in a satisfactory way. The NRC is going to be there, and they're probably going to want to run as fast, if not faster, than we are. Anything

1 that happens from here on out, anything that has 2 happened that involved the EPA in the past, is open 3 for public comment. You can reach us. You can talk 4 with us. We'd be glad to discuss it. And now I'd like to turn this over to 5 Chip, who is going to turn it over to our states. 6 7 MR. CAMERON: Thank you very much, Paul. Great presentation, and I hope that the absence of 8 light didn't interfere with that. 9 10 We're going to take a short break now for 11 about 10 minutes, because the good folks here at 12 Ashford and the local foreman are going to get us some lights, and they just need to set up. So let's take 13 14 a short break, and we're going to come back, we're 15 going to go to Paul Merges and Gary, and then we're going to have some questions for EPA and the state 16 17 regulators. 18 Thank you. 19 (Whereupon, the proceedings 20 foregoing matter went off the record at 21 8:37 p.m. and went back on the record at 22 8:47 p.m.) 23 MR. CAMERON: We owe a debt of gratitude 24 to the West Valley Volunteer Hose Company, and to Joe 25 Paddy back here, who helped to get us these lights so

that we can continue our meeting. And Joe, of course,

I think people know is a member of the Citizen Task

Force.

We're going to go to Paul Merges next.

We're going to go to Paul Merges next.

The NRC staff asked me to remind you, we do have something called an NRC public meeting feedback form that helps us to improve our public meetings notification for those -- for example, one of the questions is: was the meeting room well lighted?

(Laughter.)

But at any rate, if you could fill this out and leave this with us. And the original viewgraphs for Paul Merges from the Department of Environmental Conservation that were up here at the beginning were missing some comments. There is a new set up here, so please get those when you leave, so that you'll have a complete set.

And Paul Merges is the Director of the Bureau of Radiation at the New York State Department of Environmental Conservation, and his program is the lead radiation regulator for the West Valley state-licensed disposal area for low-level radioactive waste, as well as the lead regulator for all radiological cleanups in New York State.

Paul has also been involved with the

1	Department of Environmental Conservation's RCRA
2	corrective action program, pesticide program, and
3	energy facility siting program. He's a graduate of
4	Sienna College and received his Ph.D. at Rensselaer
5	Polytechnic Institute.
6	And, finally, he's currently he is the
7	Chair of the Conference of Radiation Control Program
8	Directors, which is an organization that's comprised
9	of all of the radiation program directors from around
10	the United States.
11	And, Paul, with that, I'll turn it over to
12	you.
13	MR. MERGES: Thanks, Chip. I do have a
14	question for NRC, and that is, who is Alice Miller?
15	(Laughter.)
16	MR. CAMERON: Alice is there an Alice
17	Miller here?
18	(Laughter.)
19	MR. MERGES: She was responsible for
20	paying the bill for the electricity.
21	(Laughter.)
22	Okay. I'm Paul Merges, and I'm from DEC.
23	I have a tie on, and it has a bunch of ducks on it in
24	order. If you turn it around backwards, though,
25	there's a little more chaos on the tie. I think

that's what the regulators are in some regards. We have our ducks all lined up in really good shape, but -- and when we're floating on the surface very well, swimming peacefully and underneath paddling like hell to stay above the water.

(Laughter.)

With me tonight are Tim Rice, who is an environmental radiation specialist from the Department; Tim DiGiulio, an environmental engineer; and Jack Krajewski. He's an environmental geologist with the Region 9 office with West Valley here.

I'm going to discuss DEC's role at West Valley, and our role is two-pronged. One is protecting the environment, and the other is protecting public health and safety, which is redundant with the health departments in a way, but the humans are a part of the environment. So we keep that in mind.

Ensuring compliance with the applicable state regulations is one of our major goals. Working comprehensively with other -- cooperatively with other regulators, which Paul Giardina spent quite a bit of time talking about. And I have -- as an aside on that, I've watched EPA and NRC swiping at each other for years as a state regulator.

And I want to be honest, I think that West Valley has been more of a cooperative effort by the federal regulators who have come together than I -- I ever expected, A; and B, than definitely I've seen on other sites in the nation. And I really hope that's a very positive sign for the future.

And by the way, it's not just because of 9/11 either. This all took place before 9/11. And when there's a war, as you know, federal agencies come together much more, and the state agencies, and they start cooperating a lot better than they do. But the simple fact is this cooperation was going on well before that, and it didn't have much to do with 9/11. And that's a positive sign. We think it's going to last longer.

Part our mission is also to assure that the public is properly informed as site remediations progress. Now, we have a broad range of responsibilities. And the Department of Environmental Conservation, I mentioned earlier today, that we're probably the broadest of the regulatory agencies. And they cover the Resource Conservation and Recovery Act, radiological protection.

Also, as Chip mentioned, the SDA, but also we have several programs that are in the process of

being delegated to the Department which do affect radiological as well as hazardous waste and other emissions from DOE facilities.

The Clean Air Act, as Paul Giardina mentioned, is a very significant part of that. The NESHAPs part of that is also a very, very important part for DOE facilities. Endangered species protection, the Department works closely with the Federal Fish and Wildlife Service, and it consults with them on preparation of environmental impact statements.

And stream protection -- the Department issues permits for any activities on or near the water bodies of the State of New York. And so any activities including the construction of culverts, or what have you, the Department has a major role in improving.

Wetlands, there are protected wetlands on the West Valley site. And a wetland can be as small as an acre or less if it happens to be a very significant habitat. But typically it's one hectare or more.

And then there are other programs which have been mentioned in the past, such as the mineral rights program -- or mineral resources, excuse me --

which regulate the mining of soils, bank sands, oil and gas in New York State, which can have an impact on this facility.

The general scope of authority in the Department is on state-licensed disposal area. The state, through our regulation, in both DEC and the Department of Labor, is the sole radiological regulator for the state-licensed disposal area. Those regulations need to be consistent with the federal regulations under the agreement states program.

However, you need to understand that the state-licensed disposal area is not your typical low-level radioactive waste disposal site. It is unique in that it predated the Low-Level Waste Policy Act. Issues of classification of wastes were not on the books at the time that the low-level waste site, as most people call it at the West Valley site, was actively receiving waste.

And, therefore, we have what we consider non-conforming waste to the state -- to the now current Low-Level Waste Policy Act in the country.

The Western New York Nuclear Service

Center also comes under -- I mentioned -- RCRA, Clean

Air Act, Clean Water Act, authority of the Department.

The permits on the ongoing activities of the SDA

include the -- as Paul Piciulo mentioned, monitoring and maintenance permits, and air discharge permits.

The New York State passed a Low-Level Radioactive Waste Management Act in 1986. That was to create a new low-level radioactive waste disposal site. The West Valley site was the only piece of property in the entire state which was specifically excluded from the Siting Commission to be considered for disposal of any new low-level waste disposal.

That law applies to the New York State Siting Commission. If there was a decision to expand low-level waste by placing new low-level waste in the SDA, or an adjacent site or a near site, we would expect that that new site would have to meet all of the regulations in Parts 382 and 383, which are New York State's adoption and going way beyond those which the Nuclear Regulatory Commission adopted in 10 CFR Part 61 covering low-level radioactive waste.

Let's see. On low-level waste, we also regulate transportation of low-level waste under our 381 regulatory authority. And while our Part regulation -- you need to understand how we receive low-level regulations in both our waste and transportation of low-level waste. In 1962, New York State became the fourth agreement state in the nation.

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And what meant is the Atomic Energy Commission set up the agreement states program in 1960, and if a state came forward and demonstrated they had a regulatory program adequate and compatible with that, they then -- the Atomic Energy Commission -- for the peaceful uses of radioactivity, with the exception of the nuclear powerplant siting in particular and regulation of federal facilities, the state could receive agreement state status which meant that the AEC relinquished, and now the Nuclear Regulatory Commission relinquishes regulatory authority based on that adequate and compatible set of regulations and laws.

Because now that the programs are not inspected by the NRC or anything like that, they are very aggressive in their inspection program of our program.

But New York State received that from the Nuclear Regulatory Commission in -- or the Atomic Energy Commission in 1962. The agency split in 19 -- the early '70s, I think it was '73 -- into DOE and the Nuclear Regulatory Commission, actually DOE's predecessor. It was called ERDA, I believe. Not NYSERDA but ERDA in those days, if I remember correctly.

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1 But anyway, DOE is self-regulating based 2 on that fact that they inherited that part of the Atomic Energy Commission and the Nuclear Regulatory 3 4 Commission, though it's not the general authority over 5 NRC or DOE facilities. As such, our regulations have a specific 6 7 exemption for DOE and its contractors, so when I mention things like the low-level waste site being 8 built in compliance with our regulations, if DOE were 9 10 to build it it's a different standard than NYSERDA, 11 number one; and, number two, our transportation 12 regulations -- if a truck leaves the site and it has DOE wastes or DOE contractor waste on it, it does not 13 14 have to comply with those. But if it has NYSERDA or 15 wastes that would be disposed of by the state at it would have to come under our 16 another site, 17 regulation. As I said, the ducks get more and more 18 confused, coming back to the tie. 19 20 (Laughter.) 21 I'm just trying to explain what the real 22 regulatory paradigm is out there for this. 23 Part 373 is our RCRA regulations, and this 24 state -- this site is a site that has interim status

permit under the Resource Conservation and Recovery

79 1 And as such, the operation, storage, closure, Act. 2 and post-closure of these facilities must be managed 3 and maintained according to the regulations that the 4 Department has promulgated under them. program which 5 is is the Department received authorization 6 from the 7 Environmental Protection Agency, and it also covers mixed -- the hazardous waste aspects of mixed waste. 8 9 What else did I want to say on that? 10 The DEC and EPA entered into a 3008(h) 11 corrective action consent order with both NYSERDA and

The DEC and EPA entered into a 3008(h) corrective action consent order with both NYSERDA and DOE, which requires a state -- a site-wide RCRA facility investigation of ERDA and DOE solid waste management units to determine the extent of contamination, taking interim corrective measures under that, development of the corrective measurement study, and the decommissioning EIS will fulfill the requirements of the corrective measurement study. But the site will have to be closed under RCRA as well as under radiation regulatory regulations.

The Federal Facilities Compliance Act the Department is also involved in, and that governs DOE facilities that produce mixed waste, and it requires a site treatment plan which is annually updated.

The Clean Water Act -- the state became --

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received delegation in December of 1978, the first EPA region in the state to receive that, which is the State Pollutant Discharge Elimination System, SPDES for those that are familiar with it, and it was a delegated program from EPA as we mentioned. creates our enhanced structure for regulating discharges to water bodies in the state. And our regulations are in Parts 700 through 706 in that area. The Clean Air Act I mentioned to you Under Title 5, the Department has accepted regulatory authority for -- from EPA for most regulated pollutants. The Department has also promulgated ambient air quality standards, Part 257. And this is one of these things where we evolved -- we will be evolving to become a regulator of DOE facilities. But right now it's in the evolutionary process. I mentioned stream protection regulations, and I mentioned the wetlands issue before. There are other regulations in the Department I haven't mentioned, such as the closure of abandoned oil and gas wells by way of reclamation, whether there be any mining or sand or what have you

disposal requirements of the Department.

Storage tank closures and solid waste

on the site.

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1 And, finally, the Department is an 2 agency with the Energy involved Research Development Authority on the environmental impact 3 4 statement for this facility. And that's all I have. 5 6 MR. CAMERON: Okay. Thank you, Paul. 7 Ι think you can see from Paul's presentation that DEC has a lot of responsibilities, 8 and we'll get to explore some of those a little bit 9 further. We want to complete the regulatory picture 10 11 by going to Gary Baker of the New York State 12 Department of Health, and Gary is the Chief of Field Operations for Environmental Radiation Protection. 13 14 He's been there for about 10 years, and he is a 15 certified health physicist. And after Gary we'll come back and start 16 with questions for this particular panel. 17 Thank you. Can you all hear 18 MR. BAKER: 19 Okay. Good. me? 20 Okav. We don't have our viewgraphs, but 21 I am -- I work out of the Bureau of Environmental 22 Radiation Protection, and I've been involved with West 23 Valley I think a little over a year now. In the past, 24 new director, Adela Salame-Alfie, had

involved as I think the primary person with West

Valley, and also Mr. Steven Gavitt, that some of you may know. I know that some of you met Steve here at an interview. They've both been involved in this program or involved with West Valley for a number of years.

And it's not -- and I've been with the Department, actually, 23 years. So I have heard some things about West Valley, because we do talk and we're a small group.

But the Department of Health has been at the meetings with the EPA and the NRC, and we are involved in developing the -- we were involved in developing the communications plan, and we plan to continue our involvement with these agencies. And, frankly, we've been very impressed by the actions that have occurred and the professionalism of the staff and all of the agencies.

The Department's objective, of course, is the protection of public health -- our Department. And as a result, we develop laws and regulations that have been implemented and promulgated to protect the public health, and we do -- we have a number of programs that range from inspecting restaurants to hospitals to nursing homes.

We have programs that address community

health, and we work with the counties to address public health. But in terms of West Valley, we have two roles, and one role is an advisory role, and the other role is a regulatory role.

And in the regulatory role we have the Safe Drinking Water Act that we administer as a Department. My bureau generally doesn't get involved too much in the Safe Drinking Water Act, unless it involves the matters of radioactive materials in which we would advise our Bureau of Public Water Supply on how to address these issues.

But the Safe Drinking Water Act programs come under the EPA also, and so in that sense we are under the Environmental Protection Agency for those standards, and those standards are the same as the Environmental Radiation -- or the Environmental Protection Agency's standards.

And our other regulatory role -- I guess we would -- if everybody else decided to leave, we would probably be very concerned and take some sort of actions. But we don't anticipate that that would be something that would occur.

But in our advisory role with DEC -- and this occurs with other waste sites, not just radioactive waste sites, but some of the sites that

involve some radioactive materials out in Buffalo that we've been involved in, and also in other non-radioactive waste sites.

We concur with and have a rapport with the Department of Environmental Conservation, so we maintain an advisory role where we discuss matters and generally agree with the Department of Environmental Conservation on regulatory issues. So from that standpoint, we address -- we are addressing issues here at West Valley.

We do not anticipate that there would be an actual regulatory role in the Safe Drinking Water Act, because there is not a regulated public water supply that's using materials from the site -- or water from the site. And in any case, we would regulate the operator of that site -- of the water supply rather than the West Valley sites.

I would say that we do agree with the communications plan, and in the plan there is a Matrix Table 1 that there are some -- I just wanted to go over some of the items that we agree with. We agree with the ALARA principle. This is a principle that we have in our own regulations where we regulate -- we do do licensing of radioactive materials facilities for medical research and academic purposes.

But in -- so we do have some regulatory roles in the use of radioactive materials, but not here in this case. But we do agree that the ALARA principle, which means that whatever cleanup there is it should be cleaned up to the extent that it's technologically feasible. And we agree with the license termination rule, the 25 millirem, the possibility of partial release, that the environmental impact statement should give appropriate guidance.

We agree with the use of MARSSIM, which is a statistical methodology to address the actual implementation of the cleanup. And, foremost, we agree that the stakeholders issue should be addressed, and we welcome any further and continued comments from stakeholders. And we would like -- and we do value them, and we do want to address them.

We have also been involved in West Valley from a monitoring -- we have been monitoring the split samples here for a number of years, and so we have been involved in the environmental monitoring of West Valley. And that has not been a regulatory role.

And with that, I think I've kind of outlined where we stand. Primarily, we will be working with Department of Environmental Conservation in terms of regulations, and we will be addressing any

1 regulatory concerns through the Department οf 2 Environmental Conservation. 3 We appreciate all of the work that has 4 been done and the accommodations that have been made 5 for us, and we appreciate the Nuclear Regulatory Commission and their very professional approach to 6 7 this issue, and the Environmental Protection Agency, who has accommodated us in a number of our meetings 8 9 and they continue to do so. And, of course, Department of Environmental Conservation, who remains 10 11 our close ally. And also, the accommodations that 12 were given to us by NYSERDA and DOE. Thank you very much. 13 14 If you have any questions, Chip will 15 handle it. (Laughter.) 16 17 I'd like to thank all the MR. CAMERON: panelists. And hold your hats, because we're going to 18 19 try -- so that we can get questions and comments from you on the record easily, we're going to try to turn 20 21 this back on. That's what made that horrific sound. 22 It's EPA -- too literal, I quess. Okay? 23 (Laughter.) 24 But at any rate, we want to go out to you 25 for comment, question. And what I'd like to do is

1 start with comments, questions for EPA and the state 2 regulators, and then we can segue into questions for 3 the NRC. I don't think we were quite done with them 4 when the lights went out. 5 And also, we do have Alice Williams, Paul Piciulo here, so we can talk to them also. But let's 6 7 at least go to the EPA and Department of Environmental 8 Conservation and Department of Health. Do we have any 9 questions? 10 And, John, can I try? Okay. Maybe if I 11 tiptoe out here. 12 Does anybody have a question for the state regulators or the EPA or any comments? 13 Anybody at 14 all? It was a lot of material that we gave you. And 15 relationships between agencies is also on the table for discussion or comment. 16 17 Yes, Ray. MR. VAUGHN: I want to thank all three of 18 19 you for the presentations tonight, but I have a 20 particular question for Paul Merges. One of the sections of the West Valley 21 22 Demonstration Project Act calls for low-level and 23 transuranic waste disposal to be done in accordance 24 with applicable licensing requirements. And since

this is the West Valley Demonstration Project Act,

1 this is the responsibility of the Department of Energy 2 in such disposal in accordance engage applicable licensing requirements. 3 4 If DOE did disposal at West Valley -onsite at West Valley, what do you see as applicable 5 licensing requirements as contemplated by the Act? 6 7 MR. MERGES: This is a hypothetical, and 8 are we talking disposal by any near surface disposal 9 or --MR. VAUGHN: It's in relation to low-level 10 11 or transuranic. So I think, yes, it would -- we're 12 talking about --We're not talking above 13 MERGES: 14 ground monitored storage or this concept that DOE has 15 worked on for --MR. VAUGHN: Well, I mean, let me rephrase 16 17 that, because I am kind of popping a question here that people perhaps haven't thought about. But this 18 19 clearly is one of the sections of the West Valley 20 Demonstration Project Act. It's one of the action 21 items for DOE. Now, they may not dispose of materials 22 -- dispose material onsite, so it may be hypothetical. 23 But since the regulators are getting 24 together in a very cooperative way, I think this is a 25 question that will need to be sorted out, at least

1 prematurely, what would be the applicable licensing 2 requirements if DOE were to engage in onsite disposal? 3 MR. MERGES: Well, I think that DOE has 4 lots of executive orders, and they would have to 5 comply with their appropriate order for disposal of transuranic waste orders. Period. 6 7 But as far as New York State's regulations applying to them, we specifically exempt them, but we 8 9 would hope that they would use our regulations as 10 an --11 MR. VAUGHN: I would ask that maybe that 12 be put as kind of a parking lot issue, in the sense that what you seem to be saying is that there would 13 14 not be licensing, yet this federal law, the West 15 Valley Demonstration Project Act, specifically calls for -- I think it calls for applicable licensing 16 17 requirements. In fact, you're saying none 18 applicable? 19 MR. MERGES: You're talking about DOE, not 20 NYSERDA, doing this, though? 21 MR. VAUGHN: Exactly, because this is the 22 West Valley Demonstration Project Act. 23 MR. MERGES: Right. Well, I'm unaware of 24 any license that would be required in this area of 25 DOE.

1	MR. VAUGHN: Yet the law specifically
2	refers to "applicable licensing requirements." So we
3	don't need an answer at the moment, but I think it
4	would be useful for NRC and DEC to look at what the
5	interpretation of that language is.
6	MR. MERGES: Okay.
7	MR. CAMERON: We have it in the parking
8	lot. Anybody from NRC or any other agency want to
9	take a crack at the question, or should we just leave
10	it in the parking lot and go on? Leave it be. All
11	right.
12	Other questions? Department of Health?
13	Department of Environmental Conservation? The United
14	States Environmental Protection Agency? Yes, sir.
15	MR. KING: I would address this to Paul.
16	Paul, you talked about the
17	MR. CAMERON: Yes. Can you just say your
18	name? I'm sorry, sir.
19	MR. KING: Bill King.
20	MR. CAMERON: All right. Thank you.
21	MR. KING: Paul Merges I know there are
22	three Pauls here. Like I said before, we ought to be
23	able to get things straightened out with all the
24	Pauls.
25	But the you mentioned that you

1 monitored the transportation of trucks going in and 2 Who monitors the rails? 3 MR. MERGES: We regulate the transport on 4 roads of trucks. We don't -- the low-level -- our 5 regulations were adopted in the late '80s for -- under We prepared an environmental impact 6 Part 381. 7 statement and a risk assessment in support of those regulations, but we really didn't feel we had the 8 9 regulatory authority to regulate interstate shipments on rail, which is what could have happened. 10 11 did not choose to -- either rail or road it was a very 12 general statement what the law was that was added to the ECL to include our regulatory program there. 13 14 So that would have to come under -- well, 15 who would regulate them is NRC and DOT or regulations would be the applicable regulations for --16 17 And, again, I go back to DOE executive They have an extensive regulatory program on 18 19 And people -- pardon? their own. 20 MR. VAUGHN: I haven't seen it in writing 21 I would choose to have someone to back and 22 put it in --MR. CAMERON: Okay. So the issue is the 23 24 regulation of --25 MS. WILLIAMS: Can I ask a clarifying on

MR. CAMERON: Sure. Go ahead, Alice. MS. WILLIAMS: Bill, is it regulation of radioactive material or regulation of radioactive waste via rail? Is that the question? MR. KING: Yes. Yes. Yes, Alice. MR. CAMERON: So who regulates the transportation of radioactive material MS. WILLIAMS: And what we'll do is What I'd like to propose MR. CAMERON: by rail? MS. WILLIAMS: Yes. We can get that definitive answer to Bill at a later date. MR. KING: All right. MS. WILLIAMS: The Department MR. CAMERON: Okay. So, Alice, your committee can answer that. MR. KING: Under the national contingency plan, DOE must manifest all of this material, properly manifest it. Also, that's another key to that manifesting, so that it doesn't end up going in the wrong waste disposal site. MS. WILLIAMS: I'll take the action to get a response in writing back on that. MR. CAMERON: And I think that the NRC	1	that?
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	23	MS. WILLIAMS: I'll take the action to get
MR. CAMERON: And I think that the NRC	24	a response in writing back on that.
	25	MR. CAMERON: And I think that the NRC

1 folks are saying that the Department of Transportation 2 has, really, the primary role in doing this. And you 3 may be able to provide more detail on that. 4 think the simple answer is Department of 5 Transportation. Other questions for our federal and state 6 7 regulators? Larry and Chad and Jim, do you want to come back up here? We'll see if there's questions for 8 9 you. Open it up for any comments or questions, and we will get to the three people who wanted to make formal 10 11 statements tonight. 12 But any questions for the people who are here? 13 14 Why don't we go to the one parking lot 15 issue on budgetary. And I'll ask Alice and Paul perhaps, what are the implications for cleanup from 16 17 any potential budgetary reductions? Can you say anything about that? 18 The driving force on 19 MS. WILLIAMS: Yes. 20 the budget is the DOE appropriated budget, because 21 what we are appropriated through Congress determines 22 what 10 percent is that New York would pay. 23 The short answer is is that the small the 24 budget, the slower the cleanup. And the priority is

the safety and health of the workers onsite, and the

1	safety and health of the environment and the people
2	offsite. And so that would be addressed first before
3	any kind of cleanup activities would continue.
4	MR. CAMERON: Okay. Thank you very much.
5	Other questions?
6	Okay. Why don't we proceed to the people
7	that wanted to make a statement for us tonight.
8	Carol, do you want to come up here?
9	MS. MONGERSON: Sure.
10	MR. CAMERON: Okay. Great. This is Carol
11	Mongerson.
12	MS. MONGERSON: At last I just calculated
13	it, I've been here for between last night, this
14	morning, and tonight, I've been waiting to talk for 10
15	hours.
16	(Laughter.)
17	I also should point out who was it
18	was it you, Paul, who said that the race is won by the
19	one who not necessarily by the fastest, but by the
20	one who keeps running. Well, I qualify.
21	(Laughter.)
22	I may not be fastest, but I've been here
23	since 1974.
24	Civilized companies are governed by laws,
25	and an example of that would be we have a law that

1 says we drive on the right-hand side of the road. 2 Pure and simple. If an Englishman comes and wants to 3 drive on the left-hand side of the road, we don't 4 allow it. We -- it would be just too dangerous. 5 There are no exceptions to that law. drive on the right-hand side of the road. Period. 6 7 We have a law that says you pay income tax, and there are no exceptions to that either just 8 9 because it's hard for you or because you don't have 10 the money or it costs too much. And there are no 11 exceptions to that, no exceptions, no innovative 12 approaches, no unique solution, no flexibility at all. 13 You pay. 14 So I submit that the LTR is that kind of 15 a rule. The NRC is determined that that safe level -the highest safe level, because if it were lower ALARA 16 17 would go into effect. And I also -- I actually went and looked 18 19 up the meaning of the word "safe" today. Safe is not 20 -- at least when you're talking about nuclear waste, 21 it's not something we can have more or less of. It's 22 either safe or it's not safe. So when you apply the 23 LTR, we have to assume that it's the highest level 24 that's safe.

So I have three questions. How do we --

how come DOE is allowed to break that rule? What is the point of applying a rule if you're allowed to break it? That's a rhetorical question, because I already know the answer.

(Laughter.)

The answer is that -- because it's too hard, and it costs too much. It has to be technologically feasible and economically justifiable, whatever that expression is you use. Basically, in English, that means it's too hard and it costs too much.

So what are we here at West Valley? Are we second-class citizens just because we have a site that's especially dirty and especially challenging and difficult to clean up? Does that mean we don't get to get the same kind of protection that the rest of the country gets?

My second question is: how come NRC doesn't have to follow the same environmental protection laws that the rest of -- the procedures that the rest of the country does? For instance, NEPA. How come you don't have to follow those regulations?

That's also a question that doesn't require an answer, because you've already provided

one. You say it's because you've already done a NEPA procedure on the LTR, but that was a different LTR. I know you claim it wasn't, but it is. The LTR that you've applied to West Valley is different from the one that was generic and had the NEPA procedure.

My third question is: how could you even consider reclassifying high-level waste into incidental waste? For one thing, it's against the law. It's against the West Valley Demonstration Project Act. For another thing, every school child knows that you can't change the physical nature of a substance by renaming it. It simply doesn't make any sense. It's ludicrous to even consider that.

I would like to really close by saying I'd like to have the opportunity to share with you my visions of this -- for this site, because I think it's applicable here. DOE has told us their vision for the site, which is basically the cement in place scenario.

And -- but my vision is this: I would like to see DOE commit itself to really cleaning it up, getting it up out of the ground, exhuming the burial ground, and taking up the tanks, doing what they have to do with the residual waste in the melter, doing what they have to do with the building to get it all up in retrievable/monitorable storage above

1 ground.

And I don't want to hear from you that it's technologically infeasible, because I saw DOE do this vitrification project. They didn't things nobody thought were going to be possible, or at least a lot of us didn't think they were going to be possible, and they've done it magnificently. So I know that you can exhume that burial ground.

And the great benefit of that for DOE would be that NYSERDA would get off their backs then.

(Laughter.)

So, and incidentally, just to go back a little bit, for the NRC, if you would just go back to the same LTR that you applied to the rest of the country, the generic one, you wouldn't have to do a NEPA, because you could use the NEPA but you're not, at least not so far.

So that's all I have to say. Thank you.

MR. CAMERON: Thank you very much, Carol.

Is Lou Brehm still with us? Lou, would you come up and give us your comments, please?

MR. BREHM: I have a pair of very strong reading glasses. They're only used for low light conditions, and, of course, I know what a well lighted facility this is, so I left them home. So --

(Laughter.)

-- please bear with me if I have trouble with some of the words here.

I'm a Senior Environmentalist with Erie County Environmental Planning, and I'm filling in for Mark Wichkowski tonight from the Energy Office. I'm sure you all know who he is. And I have a prepared statement.

On behalf of county executives in the County of Erie, we wish to make the following four item position statement. Item number one, we support the Citizen Task Force position regarding the policy statement and believe that: a) the lack of definitive prescriptive criteria will only complicate matters in any future EIS process, and b) we believe that reclassification of residual high-level waste is incidental. And the opportunity for decontamination exemptions based on technical and feasibility or cost is not acceptable.

Item number two, the NCR is failing to uphold necessary NEPA requirements for establishing decommissioning criteria for West Valley.

Item number three, the policy statement is inherently vague, and, therefore, will be subject to much future speculation and rancor as decontamination

1 criteria are debated after the EIS process. This is 2 not a proactive approach. 3 Item number four, the NCR should 4 incorporate the CTS recommendations and amend the 5 policy statement to reflect unambiguous standards for decommission and -- for decontamination, rather, and 6 7 decommissioning of the West Valley site. This concludes the Erie County position. 8 9 I will gladly repeat any items if you had trouble 10 understanding them. 11 MR. CAMERON: Okay. Thank you, Lou, and 12 thank Erie County for bringing those remarks to us. Gary Abraham? 13 14 MR. ABRAHAM; I'm speaking on behalf of 15 Concerned Citizens of Cattaraugus County. We are a nonprofit organization that's been around since 1991. 16 We represent about 600 individuals and families in the 17 18 county. 19 We submitted comments on the draft policy 20 2000, and statement in I want to express 21 frustration with not having any response to those 22 comments. At the time, I was in an academic position, I had a very nice situation where I could spend 60 23 24 hours, which is what it took me, to figure out the

rules to comment intelligibly on the draft policy

statement. I don't have that same luxury anymore.

And I know that all of these folks up here spent a lot more time than I did, although the people from the public in this county and in the neighborhood didn't get paid a penny to make their comments, and I didn't get paid a penny to make my comments. I took that time out of my job to do that.

And I've done comments on a number of DEC projects, and I almost always get a responsiveness summary or sometimes, if I'm lucky, I get responses exactly to my comments. In this case, I heard for the first time tonight, and I'm gratified to hear, because it was part of my comments submitted for Concerned Citizens, that we were concerned that the EPA standard was much more protected than the NRC standard and the DOE proposed standards, that all of these standards are coming together, and the EPA now is saying -- and like I said, I heard this for the first time tonight, that they're satisfied that the NRC LTR standards are as protective as their own.

But looking forward to the EIS process, I can't help but wonder that the lack of responsiveness to local people's comments by the agencies -- and I know this is a very complicated technical process, but I think that there are enough resources here to at

least do that, to respond to our comments on a timely basis. It doesn't bode well for the progress of the EIS process which will be long and will probably involve a number of battles over very specific issues.

Another comment I made at the time, which I don't see resolved here, is that the process of determining what level of cleanup and how that cleanup will go is being broken up into parts under NEPA and SEQRA, the two federal and state statutes that govern the environmental impact review process. It's illegal to break up a project into separate parts that essentially will have to be decided ultimately as a whole.

That's called impermissible segmentation. I still see that happening, and the cooperation of the agency certainly will allay some of my fears there, but, in fact, the plans seem to be to put these pieces together over time over a long drawn-out period, and decide how to clean up separate parts and separate issues one at a time. I don't think that's permissible under the environmental impact statement rules.

I think more importantly perhaps for the local public, though, is the question of how the impacts are going to be determined and what is going

to be considered technologically feasible. Technologically feasible involves a cost-benefit analysis. You determine what the impacts are and how much you can spend to mitigate those impacts.

Is it going to be the resident farmer who will be the standard for what the impacts are? What about the impacts of hazardous waste as well as radiological waste that are seeping through the groundwater? This is an unusually erosive site. We've asked that to be taken into account. The Coalition for West Valley has talked about that from the beginning.

There are hazardous wastes and radiological wastes seeping into Cattaraugus Creek. There are people who fish along Cattaraugus Creek, all the way down to the Indian reservation at Lake Erie. There are deposition of hazardous waste materials as well as radiological waste materials in the sediments. There is biomagnification of those materials as they move through the food chain as microorganisms eat them and they eventually make their way up to fish, and then on to the kitchen table of the people who eat those fish.

Well, the environmental impact statement looked at the impacts of that on the people who are

1 the fish eaters downstream from the site. Those fish, 2 those sediments, those materials go into Lake Erie. 3 People from all over the place eat that -- eat those 4 fish. 5 Now, if you expand the scope of impacts great enough, then the cost of cleaning up those and 6 7 mitigating those impacts has to go up. So there is a game that will be played over what is the scope of the 8 9 impacts, and can we narrow the scope of the impacts to bring it into -- under a budget? 10 11 Or do we take a realistic look at what the 12 impacts will be over 1,000 years? And we know that many of these materials are going to be hazardous for 13 14 much more than 1,000 years, the radiological materials 15 in particular, and increase the resources that we bring to bear on the cleanup. 16 17 So we can use numbers and exposures, but are we going to calculate all of the people who are 18 impacted and add up all of the numbers? 19 Or are we going to restrict the scope of impacts and bring the 20 21 cleanup down to a realistic, feasible level from a 22 budgetary point of view? 23 That's another game that will be played in 24 the environmental impact statement process. And as we

comment and participate in that process, I would like

1 to think that the agencies will be more responsive in 2 a more timely manner to the people who live in this 3 place, and provide local knowledge that the agencies 4 don't have and can't have. 5 The whole idea of public participation in the environmental impact review process is to bring 6 7 local knowledge to bear on the project. And if local knowledge is going to be simply crunched into a 8 quantitative calculation of risk assessment, it's not 9 going to be meaningfully considered. 10 11 And, finally, I would want to say that the 12 benefits that this site provided were benefits for the The burdens are not on the entire entire nation. 13 14 nation. The resources of the entire nation have to be 15 put back into cleaning this up and mitigating the impacts on the people who are bearing most of the 16 17 It's not fair to do anything else. burden. 18 Thanks. 19 MR. CAMERON: Thank you, Gary, for those 20 comments. 21 I'm going to just emphasize the one for 22 future reference, which is the effective response to 23 public comments in any environmental impact statements that are prepared by the agencies. 24

And next we're going to

25

qo

to

Jim

1	Pickeral. Is Jim here?
2	MR. PICKERAL: I'm still here.
3	MR. CAMERON: Great.
4	(Laughter.)
5	Thank you for staying with us.
6	MR. PICKERAL: I didn't fall asleep at any
7	point in time here.
8	(Laughter.)
9	The presentations were good.
10	MR. CAMERON: There won't be a quiz.
11	(Laughter.)
12	MR. PICKERAL: I've been with the
13	Coalition for almost as long as I can remember, but
14	there are a couple of remarks from previous speakers
15	that I want to bring forth before I get into my own
16	diatribe.
17	Several years ago, I attended a hearing by
18	DEC on the classification of Cattaraugus Creek, and
19	I've got to tell you about this administrative
20	miracle, because it just rubbed me the wrong way.
21	Cattaraugus Creek is classified as a Class C stream,
22	and it goes down to Gowanda, and then there is this
23	state facility. And then it is upgraded to a Class B,
24	so you can drink the water. And then, after it gets
25	by that facility, it's now downgraded again to

Class C.

I don't want to see and/or hear of any more administrative miracles like that.

(Laughter.)

Now, the second thing was something that Paul Merges brought up, and it had to do with World War -- principally with World War II. And what he said was that when the nation goes to war, it all draws together. In other words, the one thing that he forgot to tell you was that the sky's the limit as far as dollar bills is concerned.

And now we get to what I want to say. What's wrong with this picture? Here we have had six government agencies coming in here and telling us, "This is what I'm going to do. This is what I'm going to do."

One more. That's what I'm going to do, too.

(Laughter.)

Now, all of these agencies come from one source. We, the people, the first three words in the Constitution of the United States, we, the people, created the Federal Government. The Federal Government created all of the federal agencies that we're talking about here tonight, and through that

1 Constitution it gives recognition to the state 2 agencies. 3 Now, all of these agencies are, one, 4 servants of we, the people, not our bosses. You do 5 not come down here and tell us what you're going to do. We, the people, tell you what you're going to do. 6 7 Number one, this nation is at war with a pollution of: a) the air, b) the water we drink, and 8 c) the land that we derive our food from. So what is 9 the answer? The answer is: the sky is the limit as 10 11 far as the dollar bill is concerned. 12 Every one of you agencies needs to go back to your bosses and tell them, "Look, we are still the 13 14 servants of the people, and we're accountable to 15 them." That's all I'm going to say. Good-bye. 16 17 (Laughter.) Thank you, Jim. 18 MR. CAMERON: Okay. 19 Next, let's go to Ray Vaughn, and then we'll finish with Warren Schmidt. 20 21 MR. VAUGHN: I want to say just a few 22 words about the final policy statement, particularly 23 about the three different versions of the final policy 24 statement. One is the written version, and I think

what Erie County said is something about -- it's

inherently vague. I hadn't thought of that phrase, but that seems quite applicable.

The written version of the final policy statement is problematic. There is another version that I heard quite a bit about in the last 24 to 30 hours -- in last night's meeting, in today's meeting, both of today's meetings actually -- that sounds a lot better. And there's another version that I will call my own strictest reading of the written or published version of the final policy statement.

So let me talk about these three in a little bit more detail, and I will also submit for the record a copy of the letter that West Valley Coalition just sent to Chairman Meserve of NRC. This letter deals with a number of serious issues. I'll spare you the reading of the 10 pages tonight, but it will be part of the record.

This letter is directed partly to the written, published version of the final policy statement. Some of the things in it may not apply to the better version, the orally-described version and my own strictest reading of the published version. But there are things in here that go into other issues that I won't talk about tonight but still need some very serious consideration by NRC. So I pass that on.

As I say in the letter, as the Coalition says in the letter, we have a lot of concerns about the excessive flexibility and lack of definiteness of the final policy statement. Other speakers have certainly talked about that tonight.

I took the liberty of removing the loopholes from the published version. And for those of you who can see it, I simply smithed out the words flexible, flexibility, innovative solutions, exemptions, from the various stages of the published version. You can see that there are quite a few of these loopholes that I've excised in this manner, and I will pass these on for possible inclusion in the record. I will also pass on the 21 excised words.

(Laughter.)

It's, in large part, the emphasis that was given to flexibility, the availability of exemptions that concern me, the fact that it was pointed out so frequently in the published version. What we've heard orally from NRC is quite different. What they have said, I think, is more clear-cut, more encouraging, and that is that the license termination rule has been adopted as the policy for West Valley.

They have said orally that getting an exemption would be a very high hurdle, that it's not

going to be granted easily. They kind of ducked the question of how they would handle it from a NEPA standpoint, but nevertheless I was quite encouraged by hearing NRC talk in person about what they issued on February 1st.

It's still problematic which governs,

It's still problematic which governs, whether it's the written version which I think is inherently and hopelessly vague, or the much more encouraging version we've heard in person.

The third version is what I call my own strictest interpretation of the published version, and that also is not too bad. In other words, I think I can live with that, because as I interpret it a lot of it can be thrown out or revised.

As Carol mentioned and as we have certainly said in the letter I just gave to NRC and the stenographer, the incidental waste advice or whatever that consists of in the final policy statement involves something that is illegal. In other words, as we read the West Valley Demonstration Project Act, there simply is no legal way to reclassify high-level waste as incidental.

So my own strictest reading of the published version says we can throw that out. We don't have to worry about it. It might have to be

litigated some day, but for the time being we can figure that that's not really a part that will go forward.

The question of exemptions, as I read the operative part of the final policy statement in the Federal Register -- and I understand they have to be roughly the last couple of pages -- I think that exemptions are not clearly granted in that operative part. And I think there are also problems when you consult 10 CFR Part 20 or 10 CFR Part 50 for the applicable exemption language, whether it would be applicable to a non-licensee such as DOE.

In terms of some of the other concerns I have with the rather ambiguous published version, if I apply my own strictest interpretation to the definition of critical group, for example, I think that the NRC is inclined -- as discussed in the final policy statement -- to make certain assumptions about what the critical group may be.

And as Gary Abraham was referring to, how you define the affected people is quite important. It may be the resident farmer is the critical group -- in other words, the most likely to be exposed under the circumstances. Or it may be that another group would be. You really need to look at a wide range of groups

before you make that decision.

I think despite what the final policy statement says, when you look at the license termination rule and look at the governing language there, it is quite clear that care is needed in determining what the critical group is.

Combined dose is another issue. As I read the inherently vague language of the final policy statement, NRC proposes to combine all of the doses from the NRC-regulated part of the site into one calculated dose that must meet the license termination rule. They then say that the SDA would not be included in that calculation. That's at least how I read the language of the published final policy statement.

Yet, if I look at the license termination rule, it's quite clear that previous burial must be included in the calculation of what the allowable dose is for the NRC licensed portion of the site, or, in this case, the criteria that NRC is setting up for DOE at West Valley.

So my own strictest reading of the published version is much more encouraging than a casual reading of the whole thing might be. And let there be light.

1	(Laughter.)
2	Thank you very much.
3	(Laughter.)
4	MR. CAMERON: Thank you, Ray.
5	Let's go to Warren Schmidt. Warren?
6	MR. SCHMIDT: Thanks, Ray.
7	My comments tonight are on behalf of the
8	Citizen Task Force of West Valley. My remarks are
9	from a letter that was sent to Chairman Meserve this
10	morning on behalf of the Citizens Task Force. It is
11	only two pages, so I will read it to you.
12	In verbal testimony given at the public
13	briefing on January 12, 1999, and in written comments
14	dated December 22, 1998, and January 5, 2000, the West
15	Valley Citizen Task Force (CTF) expressed general
16	agreement with the U.S. Nuclear Regulatory
17	Commission's (NRC) application of the license
18	termination rule (LTR) as the decommissioning criteria
19	for the West Valley Demonstration Project.
20	However, the CTF specifically detailed
21	numerous objections we had with earlier wording and
22	provisions in the draft policy statements which would
23	have: 1) delayed NRC's prescription of definitive
24	decommissioning criteria until after the current West

Valley environmental impact statement (EIS) process

was completed.

Number two, allowed residual high-level waste (HLW) at the site to be classified as incidental waste. And, number three, allowed the United States Department of Energy (DOE) to depart from the LTR standards if they simply developed a rationale indicating that a particular cleanup alternative was considered technically infeasible or prohibitively costly.

We clearly urged the NRC to reject any such approach, and we were guardedly optimistic that the final policy statement would incorporate our recommendations and fulfill the NRC's obligation to prescribe a definitive set of criteria for decommissioning at the West Valley site per the WVDP Act.

Consequently, we are extremely disappointed that the final policy statement as published in the Federal Register on February 1, 2002, contains provisions which: 1) create a two-step process whereby NRC will allow DOE to select a preferred alternative following completion of the EIS, and then, and I quote "...verify that the approach proposed by DOE is appropriate."

Number two, establish new criteria for

making incidental waste determinations which effectively allow DOE to reclassify much residual HLW and ultimately dispose of it on the site. And, number three, will allow exemptions from the LTR criteria, such as higher human exposure dose limits, should the DOE choose to select a particular cleanup alternative due to cost considerations. It should be noted that this would be the first time that federal high-level waste would be left on non-federal land.

In short, the CTF now believes that the Commission has failed to fulfill its mandate from Congress of prescribing decommissioning criteria for the West Valley demonstration project. A criterion is defined as a standard, a rule, test, or -- by which something can be judged.

The policy statement, as issued, provides for outright exemptions from the LTR and reevaluation following completion of the EIS. even stated therein that, and I quote, "...for those portions of the site that are unable to demonstrate compliance with the restricted release LTR's requirement, the dose limits should be viewed as goals." Goals are not criteria.

The policy only purports to establish criteria. The unusual number of qualifying provisions

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serve to diminish the NRC's relevance in the EIS process and reduce the proposed LTR criteria to mere goals which may, or need not, be adhered to by DOE. In our public briefing comments dated December 22, 1998, we stated our resolute opposition to the NRC extending DOE this form of de facto authority in establishing the cleanup standards for the project.

Last page.

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question whether the West Valley Demonstration Project Act authorizes the NRC establish incidental waste determination criteria for We are increasingly concerned about the project. to accelerate decommissioning revised DOE plans activities when the respective long-term responsibilities of the federal and state governments in the cleanup and monitoring of the West Valley site have not yet been established.

The CTF, therefore, necessarily opposes any actions which serve to facilitate premature withdrawal of DOE from the project before all West Valley Demonstration Project Act and National Environmental Policy Act (NEPA) obligations are fulfilled. Consequently, we request clarification of the Commission's authority for providing incidental waste determination criteria for West Valley -- the

documentation of any procedural or public participatory requirement which normally might apply to such an action.

In addition, we request formal definitions of engineered barriers and institutional controls as they relate to the LTR and EIS analyses. As the NRC has previously acknowledged, the West Valley site presents unusual challenges should long-term institutional controls need to be relied upon as part of the preferred alternative for the site.

The Commission indicates in the policy statement that it need not conduct an independent environmental review even though the generic EIS supporting the LTR requires that NRC, and I quote, "...conduct an independent environmental review for each site-specific decommissioning decision where land use restrictions or institutional controls are relied upon by the licensee."

Whether the NRC conducts an independent review or not, we believe it is crucial that formal guidance regarding institutional controls should be issued because of: number one, the LTR dose criteria should institutional controls fail; and, number two, the presumptive failure of institutional controls in long-range EIS analyses, such as a few hundred years

and beyond.

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Some views on this subject were presented in responses A.6 and B.6 in Section IV, in the Summary of Public Comments and Responses to Comments of the Policy Statement. But definitive guidance is clearly necessary to ensure the proper evaluation of alternatives and completion of the EIS.

The CTF appreciates the effort put forth by the Commission and the NRC staff over the past several years in developing this policy for West Valley. Unfortunately, we cannot agree with the inordinate level of flexibility which has been built into the policy. The result is a document which neither ensures an adequate level of protection to local residents and the region, nor provides any limitations definite on the range alternatives which can still be considered by DOE.

As the policy statement now reads, NRC will actual decision regarding no alternative until after the EIS has been completed. Again, we feel that this compromises NRC's integrity authority in providing impartial and express regulatory oversight of DOE activities, and fails to satisfy the Commission's legislated obligation for prescribing Valley demonstration project West

1	decommissioning criteria.		
2	Consequently, the final policy statement		
3	may be subject to a legal challenge, and certainly		
4	should be subject to Congressional scrutiny and		
5	possible rejection.		
6	We expect the Commission to reconsider		
7	their position on this matter to include the consensus		
8	views of the community and local government interests,		
9	as represented by the CTF membership.		
10	Thank you.		
11	You already have a copy.		
12	MR. CAMERON: Thank you, Warren. Yes, we		
13	have a copy for the transcript.		
14	Well, we've heard presentations from a		
15	number of agencies tonight. You've heard		
16	representatives from the community, including citizens		
17	groups, the task force, others in the community. We		
18	are at our adjournment time, but let me ask if, based		
19	on what you heard, are there any other questions or		
20	comments that anyone wants to make before we close		
21			
21	tonight?		
22	tonight? Yes, Ray?		
22	Yes, Ray?		

1 MR. CAMERON: Okay. Thank you, Ray, for 2 expressing that. Lee, did you have a comment? 3 4 MS. LAMBERT: Ηi. I'm Lee Lambert. 5 Again, coming from the task force meetings when they 6 first started in February 1997, there 7 misunderstanding. I thought that we were going to be 8 part of the committee; we weren't. We tried to become 9 part of it for quite some time, and we've made 10 comments on the procedures. 11 One of my first questions, even before I 12 was on the committee, was, where are the criteria? How can we make any decisions here when we don't even 13 14 know what the criteria are going to be? 15 And that was a question that came up from -- through the next roughly two years until the first 16 17 draft came out. The actual criteria was a paragraph about an inch and a half, maybe two at the most. 18 19 it was sent back by the Commissioners with a number of 20 comments to the staff from the Commissioners, and then 21 they came back again and that was our first draft that 22 we commented on -- that was commented on in January of 23 2000. 24 One of the problems that we've had with

citizen participation is suspicion of the government

in thinking that this is not going to do any good, and they're not going to listen to me.

When they come out with something in November, or in the middle of December, and they gave you 30 days or 60 days to respond — this has happened in — involved with the Army, and then they give you through January 5th to respond. And groups are not always meeting in December, and so you can't even get your group together to decide what you're going to get as a response.

So this is a big problem in public participation, and I would like all of the regulators to know that this is what we're seeing. Public participation is what we are urging.

So at any rate, that draft came out. We wrote a letter and asked for an extension of time because we knew there wasn't enough time to put together a response, which was given. And we responded in March of 2000.

We included an entire page of environmental laws and regulations that we were involved in -- in effect for 20, 30, 40 years. And so we felt that we were very involved in the environment, and we had a good deal of encouragement that perhaps this time we would see some results. And it didn't

1	happen, and here we are two years later and we don't
2	feel that this draft that this final policy
3	statement is really any better than what came out two
4	years ago.
5	And so I still I guess I'm asking the
6	same question again that I asked five years ago.
7	Where are the criterion?
8	Thank you.
9	MR. CAMERON: Okay. Thank you. Thank
LO	you, Lee.
l1	Carol?
12	MS. MONGERSON: I just realized that I
L3	didn't really complete my thought about my vision, and
L4	I'd like the opportunity to do that.
15	MR. CAMERON: Absolutely.
L6	MS. MONGERSON: My vision really includes
L7	a new demonstration project. It includes
18	MR. CAMERON: Carol, I'm sorry to
L9	interrupt you. I don't think that we're getting you
20	on the transcript. Do you mind coming up here?
21	MS. MONGERSON: My vision really includes
22	the starting of a new demonstration project. It would
23	mean going to Washington for new funding. One of the
24	benefits to DOE would be that you'd have all of us
25	behind you instead of against you, if we could be sure

1 that you were going to clean up this site in some way 2 that was acceptable to us. 3 So we would go to Washington and fight for 4 that kind of a demonstration project. I don't think 5 it is totally unreasonable to think that that could And I'd like to just think about that. 6 7 MR. CAMERON: Okay. Thank you, Carol. I'd like to thank all of you for your 8 9 patience tonight. We did present a lot of material to you, and we didn't have any light. But also, thank 10 11 you for your thoughtful comments. And I'd just like 12 to turn it over for -- if he wants to make any final brief comments -- to Larry Camper, who is our senior 13 14 NRC official here. Larry? 15 MR. CAMPER: Yes. Thank you, Chip. 16 Let me say that between the meeting last 17 night, the meeting this morning, and the meeting tonight that we've heard a lot of input from many of 18 19 First, we appreciate the input. It is an 20 important component of the process. 21 We have listened intently. We will be 22 preparing summary information that we will share with 23 senior management at the NRC and the Commission. 24 We have a number of letters that have been

presented to us. I have seen two tonight on behalf of

the CTF that were read to you. We also have one from NYSERDA that I saw a few minutes ago for the first time. I'm virtually certain that in our process those incoming letters will be ticketed. The staff will be assigned to prepare responses.

As a result of those responses, I think that we can provide further clarification about the policy statement and some of the issues that we raised in those letters.

I'm not certain that we'll ever be able to give everyone an answer that they will be totally satisfied with. But it is incumbent upon us, to the maximum extent possible, to clarify and answer the letters and try to explain what the policy statement means.

I would like to emphasize remarks that I have made in all three meetings. And that is that the Commission is very interested in seeing this decommissioning criteria applied at this site, the LTR, and the policy statement being addressed fully within the environmental impact statement and the delineation of the preferred alternative.

We're going to be actively involved in that process. We do view the final policy statement, although some may view it as having flaws, we

understand that. It is a major milestone in this process.

about encouraging us all to focus on the environmental impact statement, the development of the preferred alternative, bringing to bear many of the concerns that you've expressed as DOE, NYSERDA, EPA, and NRC go through the development of that environmental impact statement. All of those comments will be considered and addressed as part of that process.

And I guess I'd like to leave you with one final thought. The decommissioning of sites is always difficult and complex, not only at West Valley. And there are concerned citizens at every one of those sites as well. But I want to assure you, as sincerely and strongly as I can, the NRC, EPA, the state regulators, and, yes, DOE and NYSERDA are all committed to the same thing -- that decommissioning the site is successful, to a standard that will protect public health and safety.

And we're going to be as open in the process as we can. There will be further meetings. There will be further discussions. We will continue to invite your participation.

We appreciate your input, and we thank

Package ADAMS Number: ML021290060

Transcript: West Valley Demonstration Project Public Meeting on April 17th

Attachments:

- 1. Noticed Meeting Agenda at West Valley Demonstration Project, April 17, 2002, 7:00 p.m. 10:00 p.m. 1 page
- 2. IX Acronyms 1 page
- 3. NRC Contact List 1 page
- Nuclear Regulatory Commission
 Decommissioning Criteria for the West Valley Demonstration project (M-32) at the West Valley Site; Final Policy Statement (67 FR 5003) 10 pages
- 5. NRC Public Meeting Feedback (NRC Form 659) 2 pages
- West Valley Demonstration Project NRC Public Meeting April 17, 2002 slide 1
 NRC Public Meeting slide 2
- 7. West Valley Demonstration Project Act (Public Law 96-368) slide 3 WVDP Act-Shared Responsibilities slide 4
- 8. Relationship and interactions with the Nuclear Regulatory Commission slide 5 How the WVDP Premises is Regulated slide 6
- How the WVDP Premises is Regulated slide 7
 DOE Orders Mandate Operational Requirements for WVDP, Including... slide 8
- 10. Path to WVDP Completion slide 9
- 11. NYSERDA Western New York nuclear Service Center slides 1 and 2
- NYSERDA History slide 3
 NYSERDA State-Licensed Disposal Area slide 4
- 13. U.S. Nuclear Regulatory Commission Roles and Responsibilities at West Valley slide 1 What are our goals? slide 2
- NRC Roles and Responsibilities slide 3
 NRC Roles and Responsibilities slide 4
- 15. NRC Roles and Responsibilities slide 5 NRC Roles and Responsibilities slide 6
- 16. NRC Performance Goals slide 7Decommissioning Background slide 8
- 17. Implementation slide 9
 License Termination Rule (LTR) slide 10
- 18. License Termination Standards for Unrestricted Release (10 CFR 20.1402) slide 11 Perspective on Dose slide 12
- Natural Background slide 13
 Commission's Final Policy Statement on Decommissioning Criteria for West Valley Demonstration Project - slide 14
- Policy Statement Topics slide 15
 License Termination Rule (LTR) slide 16
- 21. The Application of the LTR to WVDP slide 17 Decommissioning Criteria slide 18
- 22. Decommissioning Criteria (Cont.) slide 19 Incidental Waste slide 20
- 23. Previous Authorized Burials slide 21
 Decommissioning of West Valley slide 22
- 24. Environmental Analysis slide 23
- 25. West Valley United States Environmental Protection Agency slide 1

- Chronology of EPA's Recent Involvement at West Valley slide 2
- 26. Chronology, cont'd slide 3 Chronology, cont'd - slide 4
- 27. EPA's Responsibilities slide 5
 EPA's Role at West Valley slide 6
- 28. New York State Department of Environmental Conservation slide 1
- 29. NYSDEC West Valley Staff slide 2
- 30. DEC Role at West Valley slide 3
- 31. Broad range of regulatory responsibilities slide 4
- 32. General Scope of Authority slide 5
- 33. Radiological slide 6
- 34. Low-level Radioactive Waste (LLRW) Transportation slide 7
- 35. RCRA (Resource Conservation and Recovery Ac) slide 8
- 36. FFCA (Federal Facilities Compliance Act)/CWA (Clean Water Act) slide 9
- 37. New York State Department of Environmental Conservation slide 10
- 38. Other Regulatory Responsibilities slide 11
- NYSDOH West Valley Site slide 1
 NYSDOH slide 2
- 40. NYSDOH Objective slide 3

NYSDOH Responsibilities - slide 4

- 41. NYSDOH Regulatory Role slide 5 NYSDOH Advisory Role - slide 6
- 42. NYSDOH Communications Plan Items slide 7 NYSDOH Activities slide 8
- 43. U.S. Nuclear Regulatory Commission Roles and Responsibilities at West Valley slide 1 What are our goals? slide 2
 - NRC Roles and Responsibilities slide 3
- 44. NRC Roles and Responsibilities slide 4

NRC Roles and Responsibilities - slide 5

NRC Roles and Responsibilities - slide 6

- 45. NRC Performance Goals slide 7
 - Decommissioning Background slide 8

Implementation - slide 9

46. License Termination Rule (LTR) - slide 10

License Termination Standards for Unrestricted Release (10 CFR 20.1402) - slide 11 Perspective on Dose - slide 12

- 47. Natural Background slide 13
- 48. Commission's Final Policy Statement on Decommissioning Criteria for West Valley

Demonstration Project - slide 14

Policy Statement Topics - slide 15

License Termination Rule (LTR) - slide 16

49. The Application of the LTR to WVDP - slide 17

Decommissioning Criteria - slide 18

Decommissioning Criteria (Cont.) - slide 19

50. Incidental Waste - slide 20

Previous Authorized Burials - slide 21

Decommissioning of West Valley - slide 22

- 51. Environmental Analysis slide 23
- 52. Comments of the New York State Energy Research and Development Authority on the Nuclear Regulatory Commission's Final Policy Statement 4/17/02 2 pages

- 53. Letter to Commissioner Merrifield from Hal Brodie. New York State Energy Research and Development Authority. March 1, 1999. Pages 1-3.
- 54. Letter to Chairman Meserve from Eric Wohlers. West Valley Citizen Task Force. RE: disagreements With the Final Policy Statement Establishing Decommissioning Criteria for the West Valley Demonstration Project. March 1, 1999. Pages 1-3.
- 55. Letter to Chairman Meserve from Raymond C. Vauhan. Coalition on West Valley Nuclear Wastes. April 14, 2002. Pages 1-10.
- 56. Buffalo News 4/17/02 West Valley, Panel raises concerns on cleanup 1 page
- 57. Buffalo News 4/17/02 West Valley, Nuclear cleanup contractor to lay off 66 employees 1 page
- 58. Regulators Communication Plan on Application of Cleanup Requirements for Decommissioning the West Valley Site 18 pages
- 59. Document submitted by Raymond C. Vauhan; Final Policy Statement 10 pages

NOTICED MEETING AGENDA AT WEST VALLEY DEMONSTRATION PROJECT April 17, 2002

7:00 p.m. - 10:00 p.m.

7:00 p.m. Welcome, Meeting Objectives and Ground rules

Francis "Chip" Cameron

Facilitator

7:15 p.m. Introductory material on status of the West Valley Site

U.S. Department of Energy (DOE)

Alice Williams

New York State Energy Research and Development Authority (NYSERDA)

Paul Piciulo

7:30 p.m. U.S. Nuclear Regulatory Commission (NRC) Role and Responsibilities/NRC

Policy Statement on West Valley

Larry W. Camper, NRC

Chad J. Glenn, NRC

8:15 p.m. Roles and Responsibilities of Other Regulatory Agencies

U.S. Environmental Protection Agency (EPA)

Paul Giardina

New York State Department of Environmental Conservation (NYSDEC)

Paul Merges

New York State Department of Health (NYSDOH)

Gary Baker

9:00 p.m. Open discussion with federal and state agencies

10:00 p.m. Adjourn

IX ACRONYMS

AEC Atomic Energy Commission

ALARA As Low as Reasonably Achievable

CAA Clean Air Act

CERCLA Comprehensive Environmental Response Compensation and Liability Act

CMS Corrective Measures Study

CWA Clean Water Act

DCGLs Derived Concentration Guideline Limits

DOE US Department of Energy

ECL Environmental Conservation Law
EIS Environmental Impact Statement
EPA US Environmental Protection Agency
FFCA Federal Facilities Compliance Act

GAO US General Accounting Office
HEAST Health Effects Assessment Summary Tables

HLW High-Level Waste

IRIS Integrated Risk Information System
LLRW Low Level Radioactive Waste
LTR License Termination Rule

MARSSIM Multi-Agency Radiation Survey and Site Investigation Manual

MCL Maximum Contaminant Level
NDA NRC-Licensed Disposal Area
NEPA National Environmental Policy Act

NESHAP National Emission Standards for Hazardous Air Pollutants

NPL National Priority List

NRC US Nuclear Regulatory Commission NYCRR New York Code of Rules and Regulations

NYSDEC New York State Department of Environmental Conservation

NYSDOH New York State Department of Health NYSDOL New York State Department of Labor

NYSERDA New York State Energy Research and Development Authority

RCRA Resource Conservation and Recovery Act

SDA State-Licensed Disposal Area SDWA Safe Drinking Water Act

SEQRA State Environmental Quality Review Act SPDES State Pollutant Discharge Elimination System

SWMUs Solid Waste Management Units

TAGM Technical Administrative Guidance Memorandum

WNYNSC Western New York Nuclear Service Center

WVDP West Valley Demonstration Project
WVDPA West Valley Demonstration Project Act



U.S. NUCLEAR REGULATORY COMMISSION HEADQUARTERS Washington, D.C. 20555-0001

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North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Website, http://www.nrc.gov/reading-rm/adams/html. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 28th day of January 2002.

For the Nuclear Regulatory Commission. Christopher Gratton,

Sr. Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

(FR Doc. 02-2498 Filed 1-31-62; 8:45 am) BILLING CODE 7590-61-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-327-OLA, 50-328-OLA, & 50-390-OLA; ASLBP No. 02-796-01-OLA]

Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 & 2; Watts Bar Nuclear Plant, Unit 1; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 FR 28,710 (1972), and sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Tennessee Valley Authority, Sequoyah Nuclear Plant, Units 1 & 2, Watts Bar Nuclear Plant, Unit 1.

This Board is being established pursuant to two notices of consideration of issuance of operating license amendment, proposed no significant hagards consideration determination and opportunity for a hearing published in the Federal Register (66 FR 65,000 and 65,005 (Dec. 17, 2001)). The proceeding involves petitions for intervention submitted January 16, 2002, by We the People, Inc., Tennessee, (WPIT) and the Blue Ridge Environmental Defense League (BREDL), respectively, challenging requests by the Tennessee Valley Authority (TVA) to amend the operating licenses for the Sequoyah Nuclear Plant, Units 1 and 2, and the Watts Bar

Nuclear Plant, Unit 1.1 The amendments would change facility technical specifications to allow the plants to provide incore irradiation services for the United States Department of Energy for the production of tritium for national defense purposes.

The Board is comprised of the following administrative judges: Thomas S. Moore, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

Dr. Thomas S. Elleman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 28th day of January 2002.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel. [FR Doc. 02-2500 Filed 1-31-02; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Decommissioning Criteria for the West Valley Demonstration Project (M-32) at the West Valley Site; Final Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Final policy statement.

SUMMARY: On December 3, 1999 (64 FR 67952), the Commission issued, for public comment, a draft policy statement that would approve the application of the U.S. Nuclear Regulatory Commission's (NRC's) License Termination Rule (LTR), as the decommissioning criteria for the West Valley Demonstration Project (WVDP) at the West Valley site. It also hald a public meeting, on January 5, 2000, to

solicit public comment on the draft. This final policy statement was developed after considering public comments on the draft, and continues to apply the LTR as the criteria for the WVDP at the West Valley site.

EFFECTIVE DATE: February 1, 2002.

FOR FURTHER INFORMATION, CONTACT: Chad Glenn, Office of Nuclear Material Safety and Safeguards, Mail Stop T– 8F37, U.S. Nuclear Regulatory Commission, Washington, DC 20555– 0001.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Background (Draft Policy Statement)
- III. Overview of Public Comments
- IV. Summary of Public Comments and Responses to Comments
 - A. Comments on the LTR
 - B. Comments on LTR guidance
 - C. Comments on implementing the LTR D. Comments on NRC's process for
 - prescribing the decommissioning criteria E. Comments on jurisdictional aspects of
 - prescribing the decommissioning criteria
 - F. Comments on the use of incidental waste criteria at the West Valley site G. Comments related to how the site
 - should be decommissioned H. Comments on the wording of the draft
 - policy statement I. Other comments
- V. Final Policy Statement

I. Introduction

This final policy statement is being issued under the authority of the WVDP Act, to prescribe decommissioning criteria for the WVDP.

II. Background (Draft Policy Statement)

From 1966 to 1972, under an Atomic Energy Commission (AEC) license, Nuclear Fuel Services (NFS) reprocessed 640 metric tons of spent fuel at its West Valley, New York, facility-the only commercial spent fuel reprocessing plant in the U.S. The facility shut down, in 1972, for modifications to increase its seismic stability and to expand its capacity. In 1976, without restarting the operation, NFS withdrew from the reprocessing business and returned central of the facilities to the site owner, the New York State Energy Research and Development Authority (NYSERDA). The reprocessing activities resulted in about 2.3 million liters (600,000 gallons) of liquid high-level waste (HLW) stored below ground in tanks, other radioactive wastes, and residual radioactive contamination.

The West Valley site was licensed by AEC, and then NRC, until 1981, when the license was suspended to execute

^{*} Although the TVA license amendment requests that are the subject of the WPIT and BREDL hearing requests that triggered this Licensing Board constitution notice were submitted separately, involve different facilities, and were the subject of separate hearing opportunity notices, both amendments are challenged by each of the petitioners. Under the circumstances, one Licensing Board is being established to consider both contested TVA applications in a consolidated proceeding. Any objection to this consolidation by any of the participants to the proceeding should be raised with the Licensing Board promptly.

the 1980 WVDP Act, Pub. L. 96-368.1 The WVDP Act authorized the U.S. Department of Energy (DOE), in cooperation with NYSERDA, the owner of the site and the holder of the suspended NRC license, to: (1) Carry out a liquid-HLW management demonstration project; (2) solidify transport, and dispose of the HLW that exists at the site; (3) dispose of low-level waste (LLW) and transuranic waste produced by the WVDP, in accordance with applicable licensing requirements; and (4) decontaminate and decommission facilities used for the WVDP, in accordance with requirements prescribed by NRC. NYSERDA is responsible for all site facilities and areas outside the scope of the WVDP Act. Although NRC suspended the license covering the site until completion of the WVDP, NRC has certain authorities, under the WVDP Act, that include prescribing decommissioning criteria for the tanks and other facilities in which the HLW solidified under the project was stored, the facilities used in the solidification of the waste, and any material and hardware used in connection with the WVDP. It should also be noted that DOE is not an NRC licensee and DOE's decommissioning activities for the WVDP at the West Valley site are conducted under the WVDP Act and not the Atomic Energy Act (AEA).

The WVDP is currently removing HLW from underground tanks at the site, vitrifying it, and storing it onsite for eventual offsite disposal in a Federal repository. The vitrification operations are nearing completion. In addition to the vitrified HLW, the WVDP operations have also produced LLW and transuranic waste which, under the Act, must be disposed of in accordance with applicable licensing requirements. Besides the HLW at the site, the spent fuel reprocessing and waste disposal operations resulted in a full range of buried radioactive wastes and structural and environmental contamination at the

In 1989, DOE and NYSERDA began to develop a joint Environmental Impact Statement (EIS) for project completion and site closure, and to evaluate waste disposal and decommissioning alternatives. Because the WVDP Act authorizes NRC to prescribe decommissioning criteria for the project, NRC and DOE agreed on NRC's participation as a cooperating agency on the EIS, with DOE and NYSERDA, to aid

NRC in its decision on decommissioning criteria. The draft EIS was published in 1996. Subsequently, DOE decided to descope this EIS into two separate EISs to address: (1) Nearterm decontamination and waste management at the WVDP; and (2) decommissioning, long-term monitoring, and stewardship of the site.2 The NRC will not be a Cooperating Agency on the decontamination and waste management EIS because the Commission is not prescribing criteria for decontamination activities considered in this EIS. The NRC will be a Cooperating Agency on the EIS for decommissioning under the WVDP Act. The WVDP Act does not address license termination of the NRC license for the site, or portions thereof. Any such license termination will be conducted (if license termination is possible and pursued) under the Atomic Energy Act (AEA) of 1954, as amended. If NYSERDA pursues either full or partial license termination of the NRC license, NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

After public review of the draft EIS, the WVDP convened the West Valley Citizen Task Force (CTF), in early 1997, to obtain stakeholder input on the EIS. The CTF recommendations for the preferred alternative in the EIS were completed in July 1998. In the latter half of 1997 (during the period that the CTF was working on its recommendations), NRC's LTR was published (62 FR 39058; July 21, 1997).

The Commission published a draft policy statement on decommissioning criteria for the WVDP at the West Valley site, for public comment, and a notice of a public meeting in the Federal Register on December 3, 1999 (64 FR 67952).³ The public meeting, to solicit public comment on the draft, was held

on January 5, 2000. As a result of that meeting, the Commission extended the comment period to April 1, 2000. This final policy statement was developed after considering the public comments on the draft. This final policy statement recognizes that a flexible approach to decommissioning is needed both to ensure that public health and safety and the environment are protected and to define a practical resolution to the challenges that are presented by the site. In that regard, the Commission has decided to prescribe the LTR criteria for the WVDP at the West Valley site, reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is compliance with the requirements of the LTR. However, the Commission recognizes that health and safety and cost-benefit considerations may justify the evaluation of alternatives that do not fully comply with the LTR criteria. For example, the Commission would consider an exemption allowing higher limits for doses on a failure of institutional control if it can be rigorously demonstrated that protection of the public health and safety for future generations could be reasonably assured through more robust engineered barriers and/or increased long-term monitoring and maintenance. The Commission is prepared to provide flexibility to assure cleanup to the maximum extent technically and economically feasible.

It should be noted that the subpart E of 10 CFR part 20 (LTR) does contain provisions for alternate criteria and subpart N of 10 CFR part 20 contains provisions for potential exemptions,4 with both alternatives based on a sitespecific analysis which demonstrates that public health and safety will be adequately protected with reasonable assurance. If the NRC license cannot be terminated in a manner which provides reasonable assurance of adequate protection of the public health and safety, then the appropriate Commission action may be to require a long term or even a perpetual license for an appropriate portion of the site until, if and when possible, an acceptable alternative is developed to permit actual license termination.5

¹ The State of New York licenses a low-level waste disposal area at the West Valley site. Unless otherwise indicated, the terms "West Valley site" or "site" used in this Policy Statement refers to the NRC-licensed portions of the site.

²⁸⁶ FR 15447 (March 26, 2001).

[&]quot;Before issuing the draft policy statement for comment, the NRC staff proposed decommission in a Commission Paper entitled "Decommission in a Commission Paper entitled "Decommission in a Commission Paper entitled "Decommissioning Criteria for West Valley," dated October 30, 1998 (SECY-98-251). On January 12, 1999, the Commission held a public meeting, on SECY-98-251, to obtain input from interested parties. Based on the results from this meeting, the Commission issued a Staff Requirements Memorandum (SRM), on January 26, 1999, requesting additional information on the staff's proposed decommissioning criteria for West Valley. In response to the January 26, 1999, SRM, the staff provided SECY-99-057, to the Commission, entitled "Supplement to SECY-98-251." Decommissioning Criteria for West Valley." Based on the contents of SECY-98-251, SECY-99-057, and written and oral comments from interested parties, the Commission issued an SRM on June 3, 1999, detailing its decisions on the decommissioning criteria for West Valley.

^{*}Exemptions to NRC regulations can be issued to NRC licensees if the Commission determines that the exemption is authorized by law and would not result in undue hazard to life or property. NYSERDA is the licensee for the West Valley site and DOE is acting as a surrogate for NYSERDA until the NYSERDA license is reinstated at the end of the WYDP.

³ If a long term or perpetual license is necessary for any portion of the site, it is the Commission's intent that that portion of the site will be decontaminated in the interim to the extent technically and/or economically feasible. In

Based on the public comments received, the Commission has revisited the issue of "incidental waste" at West Valley. The Commission has decided to issue incidental waste criteria to clarify the status of and classify any residual wastes present after cleaning of the high-level radioactive waste (HLW) tanks at West Valley. Previously, the NRC has provided advice to DOE concerning DOE's classification of certain waste as incidental waste for clean-up of HLW storage tanks at both Hanford and Savannah River. As noted above, NRC intends to apply the LTR decommissioning criteria as the decommissioning goal for the entire NRC-licensed portion of the site. The Commission has decided that the most recent advice provided to DOE for the classification of incidental waste at Savannah River, with some additional modifications, provides the appropriate criteria which should be applied to West Valley. Specifically, the Commission is now providing the following criteria for classification of the incidental waste (which will not be deemed to be HLW) at West Valley:

- The waste should be processed (or should be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical; and
- (2) The waste should be managed, so that safety requirements comparable s to the performance objectives in 10 CFR part 61 subpart C, are satisfied.

Consistent with the overall approach in applying the LTR to the WVDP and to the entire NRC-licensed site following conclusion of the WVDP, the resulting calculated dose from the incidental waste is to be integrated with all the other calculated doses from the residual radioactive material at the NRC-licensed site to ensure that the LTR criteria are met. This is appropriate because the Commission does not intend to establish

separate dose standards for various sections of the NRC-licensed site.⁷

III. Overview of Public Comments

Twenty-eight organizations and individuals submitted written comments on the draft policy statement. Comments also were provided at the public meeting held on January 5, 2000. The commenters represented a variety of interests. Comments were received from Federal and State agencies, citizen and environmental groups, a native American organization, and individuals. The commenters offered over 200 specific comments and represented a diversity of views. The commenters addressed a wide range of issues concerning the decommissioning and closure of the WVDP and West Valley site. The reaction to the draft policy statement was generally supportive. However, viewpoints were expressed on the LTR and LTR guidance and how both should be applied at West Valley. In addition, there were comments on NRC's process for prescribing the decommissioning criteria and other issues specific to West Valley.

IV. Summary of Public Comments and Responses to Comments

The following sections A through I represent major subject areas and describe the principal public comments received on the draft policy statement (organized according to the major subject areas) and present NRC responses to those comments.

(A) Comments on the LTR (restricted release; institutional controls; as low as reasonably achievable (ALARA); financial assurance; alternate criteria; time line for dose calculations);

 (B) Comments on LTR guidance (critical group, engineered barriers, cost/ benefit analysis);

 (C) Comments on implementing the LTR (continued Federal or State onsite presence, perpetual license);

(D) Comments on NRC's process for prescribing the decommissioning criteria (when to prescribe the criteria; use of the LTR "Generic Environmental Impact Statement" (GEIS) to support the use of the LTR at West Valley; NRC's National Environmental Policy Act (NEPA) obligation for prescribing the West Valley decommissioning criteria);

 (E) Comments on jurisdictional aspects of prescribing the decommissioning criteria;

(F) Comments on the use of incidental waste criteria at West Valley;

(G) Comments related to how the site should be decommissioned (waste disposition, consideration of pathways for dose, and contaminant transport);

(H) Comments on the wording of the draft policy statement (use of the word "prescribe," paraphrasing the LTR and other statements on West Valley); and,

 Other comments (implications of the policy statement regarding native Americans, transuranic waste issue).

The comments received from the public in writing during the comment period and verbally during the January 5, 2000, public meeting have been factored into the Commission's decision-making on this final policy statement.

A. Comments on the LTR

The draft policy statement presented NRC's LTR as the decommissioning criteria for the WVDP and the West Valley site. Although there was general support for the use of the LTR as the decommissioning criteria for both the WVDP and West Valley site, there were a number of comments on the LTR. Specifically:

A.1 Comment. A number of commenters were concerned that the use of the LTR's restricted release concept, which includes the use of institutional controls, to decommission West Valley may not be appropriate because of the magnitude of the waste currently on-site and the potential for this waste to provide an unacceptable dose to members of the public if controls fail.

A. 2 Response. The LTR criteria consider doses to members of the public from the loss of institutional controls. The loss of institutional controls will need to be considered in the DOE/NYSERDA EIS." Absent an exemption from the LTR provision in 10 CFR part 20, a site, or part thereof, that cannot meet the restricted release provisions of the LTR, must remain under an NRC license. The Commission will consider

addition, if a long-term or perpetual license is determined to be appropriate, the NRC takes no position on which entity should be the long-term idensee as that decision, as well as decisions regarding long term financial contributions, should be made pursuant to negotiations involving DOE, New York, and possibly the U.S. Congress. Also, under the WVDP Act, the NRC is only addressing the public health and safety aspects of decommissioning relected portions of the site. Other potential issues between DOE and NYSERDA concerning the West Valley Site are not within NRC's authority to resolve.

The dose methodology used in 10 CFR part 81 subpart C is different from that used in the newer 10 CFR part 20 subpart E. However, the resulting allowable doses are comparable and NRC expects DOE to use the newer methodology in 10 CFR part 20 subpart E. Part 61 is based on international Commission on Radiological Protection Publication 2 (ICRP 2) and part 20 is based on ICRP 26.

Applying the LTR, the total annual dose to an average member of the critical group for the site, including the resulting does from the incidental waste, should be less than or equal to 25 mrem/yr TEDE. The Commission is not establishing a separate dose standard for the incidental waste such that the average member of the critical group potentially receive a dose of 25 mrem/yr TEDE from the rest of the NRC-licensed site and 25 mrem/yr TEDE from the incidental waste.

^{*}DOE has decided to descope the draft 1996 EIS into two separate EISs. DOE will be the lead agency on the EIS that will address WVDP facility decontamination and management of waste currently stored at the site. NRC expects to be kept informed of progress as required under the DOE/NRC Memorandum of Understanding (MOU). DOE and NYSERDA will be the lead agencies on the EIS that will address decommissioning. NRC expects to participate as an EIS coopprating agency. Hereafter, this second EIS where NRC will be a cooperating agency will either be referred to as the decommissioning EIS or the DOE/NYSERDA EIS, unless otherwise noted.

granting an exemption to the LTR criteria if it determines the exemption is authorized by law and would not result in undue hazard to life or property. The Commission intends to involve the public in the processing of any exemption request consistent with the "public participation" provision in 10 CFR 20.1405, and will involve the Environmental Protection Agency (EPA) if the exemption request involves criteria greater than the dose criteria of 10 CFR 20.1402, 20.1403(b), or 20.1403(d)(1)(i)(A). Such an exemption request will also require the approval of the Commission consistent with 10 CFR 20.1404(b).

A. 3 Comment. Some commenters also were concerned about the adequacy of the LTR's financial assurance requirements for maintaining institutional controls for restricted release at West Valley, especially if the financial assurance relies on future Government appropriations that are not

guaranteed.

A. 4 Response. In general, it is assumed that when a Government agency certifies that it will seek appropriations, to maintain institutional controls for the purposes of protecting public health and safety, the appropriations will be authorized. The Commission believes that it is reasonable to expect Federal and State agencies to meet their commitments to obtain funding for institutional controls to provide for the protection of the public health and safety.

A. 5 Comment. A number of commenters were also concerned that the time line specified for dose calculations in the LTR (1000 years) is too short for difficult sites like West

Vailey.

A. 6 Response. In the development of the LTR, the Commission considered comments seeking a time period for dose analysis longer than 1000 years. Section F.7 in the LTR "Statement of Considerations," 62 FR 39058 (July 21, 1997). The Commission concluded that for the types of facilities and source terms considered, it was reasonable to use a 1000-year period. However, the West Valley site presents some unique challenges in that significant quantities of mobile, long-lived radionuclides are present on site. Because under NEPA an evaluation of reasonably foreseeable impacts is required, the Commission believes that an analysis of impacts beyond 1000 years should be provided in the DOE/NYSERDA EIS. Thus, information will need to be evaluated to determine if peak doses might occur after 1000 years and to define dose consequences and impacts on potential long-term management of residual

radioactivity at the site. Depending upon the outcome of the EIS review, the Commission may need to consider the need for environmental mitigation.

- A. 7 Comment. Some commenters were concerned about the possible application of alternate criteria, as allowed under the LTR, to West Valley, or that the policy statement should at least clearly identify the dose limit cap under alternate criteria.
- A. 8 Response. In addition to the unrestricted release limit of 25 mrem/yr TEDE, the LTR also contains alternate criteria for restricted release, which allows for a dose limit of up to 100 mrem/yr TEDE, with restrictions in place, and caps the public dose limit at 100 or 500 mrem/yr TEDE if the restrictions fail. Applying alternate criteria to a specific site requires opportunities for public involvement, coordination with the EPA, and direct approval of the Commission. The alternate criteria in the LTR were developed for difficult sites to minimize the need to consider exemptions to the LTR, although exemptions also may be considered. Under appropriate circumstances and based on a sitespecific analysis, the Commission considers the application of alternate criteria protective of public health and safety. Absent a detailed site-specific analysis, it is premature for the Commission to make any judgments, at this time, on the acceptability or nonacceptability of applying alternate criteria or exemptions to the WVDP or any portion of the NRC-licensed site. In any event, neither the alternate criteria in the LTR nor exemptions will be approved by the Commission without full prior public participation. involvement of the EPA, and a Commission determination that there is reasonable assurance that there would not be undue hazard to life and
- A. 9 Comment. There were also comments about the use of the ALARA process in the LTR at West Valley. Some believed that the ALARA process might be used to justify dose limits higher than those allowed by the LTR.
- A. 10 Response. As stated previously, the LTR does allow for releases with different dose limits. Generally, ALARA is used to reduce doses below authorized limits. Under the LTR, the ALARA process is not used to permit doses above the 25 mrem/yr TEDE limit without restrictions, the 100 mrem/yr TEDE limit with restrictions, or the 500 mrem/yr TEDE cap if restrictions fail.

B. Comments on LTR guidance

A variety of comments were received on NRC's LTR guidance as it relates to West Valley. Since the time that NRC's LTR became final in 1997, the NRC staff has been developing guidance to support it. In September 2000, the NRC released guidance for decommissioning, in the form of a standard review plan (SRP) ("NMSS Decommissioning Standard Review Plan," NUREG-1727).

- B. 1 Comment. A number of commenters expressed concern with how the critical group would be defined for dose assessment purposes.
- B. 2 Response. For the LTR, the critical group means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances (10 CFR 20.1003). The "Statement of Considerations" for the LTR notes that the critical group would be the group of individuals reasonably expected to be the most highly exposed. considering all reasonable potential future uses of the site, based on prudently conservative exposure assumptions and parameter values within modeling calculations. NRC's SRP for decommissioning addresses two generic critical group scenarios—the resident farmer" and the "building occupancy" scenarios. The SRP also presents approaches for establishing site-specific critical groups based on specific land use, site restrictions, and/ or site-specific physical conditions. DOE/NYSERDA derivation of the critical groups for West Valley will need to be addressed in the EIS documents. In addition to NRC review and comment, the EIS documents will be available for public review and
- B. 3 Comment. There were also several comments relating concerns that long-term stewardship costs and impacts on special populations will not be properly factored into the cost/benefit analysis, or that there should be better guidance provided on what should be considered in the cost/benefit analysis.
- B. 4 Response. DOE and NYSERDA will determine the extent to which these issues are covered in the DOE/NYSERDA EIS. In addition, NRC will review and comment on any cost/benefit analysis in the EIS. The cost/benefit analysis that DOE/NYSERDA develop for West Valley will need to be part of the EIS documents available for public review and comment.
- B. 5 Comment. Some commenters suggested that there should be criteria for what are allowable engineered

barriers and whether or not they are considered institutional controls.

B. 6 Response. Because of the wide range of residual radioactive contamination encountered at decommissioning sites licensed by NRC, the LTR and NRC's decommissioning guidance are not prescriptive as to the criteria for, or acceptability of, sitespecific institutional controls and engineered barriers. The "Statement of Considerations" for the LTR might be read to conclude that engineered barriers are included within institutional controls. However, neither term is defined. In the Commission's view, "engineered barriers" referred to in the "Statement of Considerations" for the LTR are distinct and separate from institutional controls. Used in the general sense, an engineered barrier could be one of a broad range of barriers with varying degrees of durability, robustness, and isolation capability Thus, NRC guidance in Appendix I of the SRP on the LTR distinguishes institutional controls from physical controls and engineered barriers. Institutional controls are used to limit intruder access to, and/or use of, the site to ensure that the exposure from the residual radioactivity does not exceed the established criteria. Institutional controls include administrative mechanisms (e.g., land use restrictions) and may include, but not be limited to, physical controls (e.g., signs, markers, landscaping, and fences) to control access to the site and minimize disturbances to engineered barriers. There must be sufficient financial assurance to ensure adequate control and maintenance of the site and institutional controls must be legally enforceable and the entity charged with their enforcement must have the capability, authority, and willingness to enforce the controls. Generally, engineered barriers are passive manmade structures or devices intended to improve a facility's ability to meet a site's performance objectives. Institutional controls are designed to restrict access, whereas engineered barriers are usually designed to inhibit water from contacting waste, limit releases, or mitigate doses to intruders. The isolation capability, durability, and robustness of a specific barrier will need to be evaluated in the DOE/NYSERDA EIS. The ability of a barrier to inhibit access of the inadvertent intruder is a separate issue from whether a barrier is an institutional control. The dose analyses for a site with engineered barriers will need to consider the reasonableness of a breach by an inadvertent intruder.

C. Comments on Implementing the LTR

C. 1 Comment. There were some comments identifying who should be the long-term steward of the site if longterm stewardship is required as part of site closure. Some commenters also provided suggestions on how site longterm stewardship should be maintained at West Valley if it is needed (onsite staff, perpetual license).

C. 2 Response. NRC expects that these site-specific issues will be covered in the DOE/NYSERDA EIS and addressed in the preferred alternative. The identification of a long-term custodian is not an NRC responsibility but will be determined from negotiations involving DOE and NYSERDA and possibly the U.S. Congress. From the NRC perspective, both DOE and NYSERDA represent governmental entities and either would be acceptable as a long-term custodian.

C. 3 Comment. One commenter requested consideration of how the LTR would be implemented on the decommissioned portions of the site if there were areas of the site that could not meet the LTR.

C. 4 Response. Although the LTR does not specifically address differing release standards on a single site, NRC recognizes that the approach to decommissioning at West Valley may include portions of the site being released for unrestricted use, and portions of the site being released for restricted use, as well as portions of the site remaining under license, because of a failure to meet the LTR. In the Commission's view, the LTR is sufficiently flexible to allow for such circumstances. In particular, the Commission believes that for those portions of the site that are unable to demonstrate compliance with the LTR's restricted release requirements, the dose limits should be viewed as goals in order to ensure that cleanup continues to the maximum extent that is technically and economically feasible. The Commission also believes that after cleanup to the maximum extent technically and economically feasible is accomplished, alternatives to release under the LTR criteria may need to be contemplated. Specific examples of these alternatives are a perpetual license for some parts of the site or exemptions from the LTR. The NRC expects that these issues will be fully addressed in the DOE/NYSERDA EIS.

D. Comments on NRC's Process for Prescribing the Decommissioning Criteria

D.1. DOE recommended, for the reasons described in comments D.1.1, D.1.3, and D.1.5 below, that NRC withhold assigning the LTR as the decommissioning criteria until NRC does a site-specific analysis of the environmental effects of decommissioning West Valley.

D.1.1 Comment. The LTR GEIS (NUREG-1496) does not support the use of the LTR at a complex site like West Valley; therefore, a specific EIS for this action needs to be completed by NRC to finalize the criteria.

D.1.2 Response. Although the LTR GEIS did not specifically address the decommissioning of a spent fuel reprocessing site, it did evaluate the decommissioning of a range of reference facilities (e.g., fuel cycle facilities and reactors). In promulgating the LTR, the Commission stated in Section VI of the "Statement of Considerations" that it will conduct an environmental review to "determine if the generic analysis encompasses the range of environmental impacts at the particular site." The Commission further stated that it "will conduct an independent environmental review for each site-specific decommissioning decision where land use restrictions or institutional controls are relied upon by the licensee or where alternative criteria are proposed" as it recognized that the environmental impacts for these cases cannot be analyzed on a generic basis. Thus, the environmental impacts from the application of the criteria to the WVDP will need to be evaluated for the various alternative approaches being considered in the process before NRC decides whether to accept the preferred alternative for meeting the criteria permitted by the LTR. NRC expects to be able to rely on the DOE/NYSERDA EIS for this purpose. NRC does not anticipate the need to prepare its own duplicative EIS as NRC can consider the environmental impacts described in the DOE/NYSERDA EIS in approving the particular decommissioning criteria for the WVDP under the LTR. As an EIS cooperative agency, NRC may adopt all or parts of the lead EIS agency's NEPA documents. Under this arrangement, if NRC is satisfied with the final DOE/ NYSERDA EIS, then NRC will adopt it to fulfill its NEPA responsibilities under the WVDP Act. If NRC is not satisfied with the final DOE/NYSERDA EIS, then it will adopt as much of it as possible and modify or supplement it as necessary. In such a situation, NRC would publish its own draft EIS document for public review and comment before finalizing it. Once finalized, NRC's West Valley NEPA responsibilities would be fulfilled under the WVDP Act.

The WVDP Act does not address license termination for the site. The actual license termination for the site, if and when pursued, will be conducted under the Atomic Energy Act (AEA) of 1954, as amended. At the time of NRC license termination under the AEA (if license termination is pursued), NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

D.1.3 Comment. The NRC's prescription of decommissioning criteria is not being coordinated with the current NEPA process as suggested by the DOE/NRC Memorandum of Understanding (MOU) on West Valley.

D.1.4 Response. The process described in the DOE/NRC MOU (Section B (4)), for consulting on a sitespecific analysis of decommissioning requirements was developed to allow DOE and NRC to evaluate a range of approaches to specifically address the decommissioning of the WVDP. Thereafter, NRC was to prescribe the decommissioning criteria. At the time the MOU was signed, no comprehensive general criteria existed for decommissioning NRC-licensed sites. Decommissioning criteria were determined on a case-by-case basis. However, through the rulemaking process completed in 1997, which promulgated the LTR, there was an evaluation of various regulatory approaches for decommissioning NRClicensed sites and the selection of a range of regulatory approaches with criteria, in the final rule.

Except as provided in 10 CFR 20.1401, the LTR applies to all NRC's licensed sites. The Commission recognized, as noted in the "Statement of Considerations" for the LTR, that there would be sites with complex decommissioning issues that would be resolved by site-specific environmental reviews which considered various alternative methods for decommissioning and application of the LTR. In the Commission's view, the use of the two-step prescribing processfirst, the decision to use the LTR, and second, to use the DOE/NYSERDA EIS, to consider the impacts of the different approaches for decommissioning, before deciding whether to accept the particular approach that DOE intends to use to meet the LTR-is consistent with the intent of the MOU that various approaches be analyzed in developing the WVDP decommissioning criteria.

D.1.5 Comment. Finalizing the LTR now as the decommissioning criteria for the WVDP at the West Valley site limits the options for closure of the NRC-licensed Disposal Area (NDA).

D.1.6 Response. The Commission does not believe that prescribing the LTR criteria for the WVDP at the West Valley site as the applicable decommissioning goal & decommissioning NRC-licensed site will limit DOE from developing acceptable closure options for the NDA or any other part of the NRC-licensed site. Prescribing the LTR now is warranted because NYSERDA, as a licensee of the Commission, is subject to the LTR after NYSERDA's NRC license is reactivated at the conclusion of the WVDP. It follows that DOE should also be subject to the LTR as it is the surrogate for NYSERDA in decommissioning facilities used for the project. Therefore, it is appropriate to prescribe the LTR now for the WVDP. with the site-specific decommissioning issues resolved through the process described in Response D.1.4 above. Applying the LTR to the WVDP will provide an opportunity to DOE, as would be given to any licensee, to consider a range of approaches to achieve acceptable decommissioning, consistent with public dose limits. If parts of the NRC-licensed site cannot meet the LTR, the Commission will consider alternatives to the criteria in the LTR if it can be demonstrated that public health and safety will be protected. The NRC expects that these issues will be fully addressed in the DOE/NYSERDA EIS.

- E. Comments on Jurisdictional Aspects of Prescribing the Decommissioning Criteria
- E.1 Comment. Many commenters suggested that, because the Statelicensed Disposal Area (SDA) is immediately adjacent to the WVDP and part of the West Valley site, the allowable dose from the closure and/or decommissioning of it should be considered comprehensively with the allowable dose from the NRC regulated part of the site.
- E.2 Response. NRC's authority only extends to the NRC-licensed portion of the site. It also should be noted that the LTR recognizes that people can be exposed to up to four sources of radiation and still meet the nationally and internationally accepted public dose limit of 100 mrem/yr TEDE in part In considering the environmental impacts for the entire site, the DOE/ NYSERDA EIS will need to consider the number of sources to which the critical group may be exposed. However, NRC continues to dialogue with State representatives to exchange information on issues of mutual interest regarding potential sources of public exposure.

E.3 Comment. A few comments were made indicating that NRC ought to

prescribe the dose limits in EPA's decommissioning guidance to West Valley, because they are more protective and could be applied to the site after IMS..., all they are made that the decommissioning criteria issue between NRC and EPA should be resolved before the criteria are prescribed.

E.4 Response. The Commission believes that the LTR dose limits plus ALARA requirements provide protection comparable to dose limits preferred by EPA in its guidance documents. The Commission notes that the LTR was promulgated by the Commission in 1997 pursuant to an Administrative Procedure Act rulemaking accompanied by a generic EIS and voluminous regulatory analysis, including consideration of numerous public comments. EPA's guidance documents have gone through no such public process. The Commission believes that decommissioning the site to the LTR criteria ensures that public health and safety and the environment will be protected. Although there is a lack of agreement between NRC's rule and EPA's guidance documents on the appropriate upper bounds on decommissioning criteria, the NRC practice of applying ALARA principles to NRC dose limits will most likely result in an NRC approved decommissioned site that satisfies the EPA criteria as well. In fact, EPA has indicated that it believes that the 25 mrem/yr TEDE cleanup dose limit in the LTR will be "protective at this site." See Letter from Paul Giardina, EPA to John Greeves, NRC (July 23, 2001). Because the LTR requirements do ensure adequate protection of the public health and the environment, and, as indicated in the preceding paragraph, EPA agrees with this conclusion for West Valley, the Commission believes that it is not necessary to wait for a formal resolution of the differences between NRC and EPA on generic decommissioning standards before proceeding with prescribing site-specific decommissioning criteria for the WVDP. As stated previously, EPA will be involved in any proposal to use alternate criteria in the LTR or exemptions from 10 CFR part 20, if so requested.

- F. Comments on the Use of Incidental Waste Criteria at West Valley Site
- F.1 Comment. Many comments were received concerning the use of the incidental waste criteria at West Valley. Most commenters did not want NRC to allow for the "reclassification" of any HLW at this site to waste incidental to reprocessing. If it were allowed, it

should be done in a way that provides for public participation. One commenter agreed that it will have to be done, but that the Commission should prescribe the criteria that are necessary and appropriate for the incidental waste determination. One other commenter believes that use of DOE's Order 435.1 is the appropriate process for reclassifying residual HLW as incidental.

F.2 Response. Section 6 (4) of the WVDP Act defines HLW as including both (1) liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste and (2) such other material as the Commission designates as HLW for the purposes of protecting the public health and safety. Since 1969, the Commission has recognized the concept of waste incidental to reprocessing, concluding that certain material that otherwise would be classified as HLW need not be disposed of as HLW and sent to a geologic repository because the residual radioactive contamination after decommissioning is sufficiently low as not to represent a hazard to the public health and safety. Consequently, incidental waste is not considered HLW. See, Proposed Rule—Siting of Commercial Fuel Reprocessing Plants and Related Waste Management Facilities (34 FR 8712; June 3, 1969), Final Rule—Siting of Commercial Fuel Reprocessing Plants and Related Waste Management Facilities (35 FR 17530; November 14, 1970), Advance Notice of Proposed Rule-making to Define HLW (52 FR 5992, 5993; February 27, 1987). Proposed Rule—Disposal of Radioactive Waste (53 FR 17709; May 18, 1988), Final Rule—Disposal of Radioactive Waste (54 FR 22578; May 25, 1989), and Denial of Petition for Rulemaking: States of Washington and Oregon, (58 FR 12342; March 3, 1993).

The Commission believes that practical considerations mandate early resolution of the criteria that should guide the incidental waste determination. Vitrification of the highlevel wastes at West Valley is nearing completion, at which point DOE intends to close down the vitrification facility. To delay providing the Commission's view for incidental waste could adversely impact the DOE, as it may prove extraordinarily expensive after the vitrification facility is shut down to provide vitrification capacity for any additional waste that must be shipped elsewhere for disposal. Indeed, in light of the fact that the site will ultimately revert to control by NYSERDA under an NRC license, both NYSERDA and NRC have an interest in ensuring that the

incidental waste determination need not be revisited.

In light of these considerations, the Commission is now providing the following criteria for incidental waste determinations.

(1) The waste should be processed (or should be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical; and

(2) The waste should be managed so that safety requirements comparable to the performance objectives in 10 CFR part 61 subpart C, are satisfied.

The resulting calculated dose from the incidental waste is to be integrated with all the other calculated doses from the remaining material at the entire NRC-licensed site to ensure that the LTR criteria are met. This is appropriate because the Commission does not intend to establish separate dose standards for various sections of the NRC-licensed site.

Previously the NRC has provided advice to DOE concerning DOE's classification of certain waste as incidental waste for clean-up of HLW storage tanks at both Hanford and Savannah River. As noted above, NRC intends to apply the LTR criteria for the WVDP at the West Valley site, reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is in compliance with the requirements of the LTR. The Commission has decided that the most recent advice provided to DOE for the classification of incidental waste at the Savannah River site,9 with some additional modifications, as the appropriate criteria that should be applicable to West Valley. These criteria are risk-informed and performance based in that the criteria allow DOE the flexibility to develop innovative approaches to meeting the performance objectives in part 61. In effect, DOE should undertake cleanup to the maximum extent that is technically and economically practical and should achieve performance objectives consistent with those we demand for the disposal of low-level waste. If satisfied, these criteria should serve to provide protection of the public health and safety and the environment and the resulting calculated dose would be integrated with the resulting calculated doses for all other remaining material at the NRC-licensed site. It is the Commission's expectation that it will ngaphy abic contours at the MATAR at the site following the completion of DOE's

site activities. In this regard, the impacts of identifying waste as incidental to reprocessing and not HLW should be considered in the DOE's environmental reviews.

G. Comments Related to How the Site Should Be Decommissioned

G.1 Comment. There were many comments and suggestions that all the waste at this site should be perhaps temporarily stabilized, or packaged and perhaps temporarily stored, but ultimately removed from the site. There were also some comments on what are the important pathways for, and manmade barriers to control, contaminant transport at the site.

G.2 Response. The Commission appreciates the public's identification of, and input on, these issues. The decisions related to alternative approaches to decommissioning the West Valley site will be evaluated in the DOE/NYSERDA EIS, and reviewed by NRC for their ability to protect public health and safety and the environment. The EIS will also be available for public comment before being finalized.

H. Comments on the Wording of the Draft Policy Statement

H.1 Comment. Several comments were made about the last part of a sentence in the Draft Policy Statement under the section entitled "Decommissioning Criteria for the WVDP." It states that "* * * following the completion of DOE/NYSERDA's EIS and selection of its preferred alternative, the NRC will verify that the specific criteria identified by DOE is within the LTR and will prescribe the use of specific criteria for the WVDP." Many suggested that prescribing the use of the specific criteria after the selection of the preferred alternative in the EIS is confusing, not what is meant by the WVDP Act, and would allow adjustment of the criteria after the EIS is completed.

H.2 Response. As addressed above in response to the various comments, the Commission's intent is to prescribe the generally applicable requirements of the LTR now, before the completion of the site-specific EIS. After completion of the site-specific DOE/NYSERDA EIS. NRC will evaluate the compliance status of the preferred alternative with respect to the LTR, as described in the Commission's final policy statement. This is a two-step process. The first step is prescribing the LTR, a set of criteria that allows for unrestricted releases, resurcied releases, and alcountry releases, that applies to all NRC licensees. Prescribing decommissioning criteria now for the WVDP allows DOE to develop alternative approaches for

⁹ See NRC Staff Requirements Memorandum "SECY-99-0284—Classification of Savannah River Residual Tank Waste as Incidental," May 30, 2000.

meeting those criteria and consider their impacts in its site-specific EIS.

The second step is for NRC to evaluate on a site-specific basis the approach for meeting the LTR. This will be done after the DOE/NYSERDA EIS is completed and NRC adopts it or otherwise produces its own NEPA evaluation of the site-specific criteria developed in the DOE/NYSERDA EIS. NRC will be evaluating DOE's and NYSERDA's preferred alternative for meeting the LTR and other alternatives presented in the DOE/NYSERDA EIS.

This process is in accordance with the "Statement of Considerations" for the LTR, which describes the relationship between the GEIS for the LTR and sitespecific decommissioning actions. A site-specific EIS is prepared in cases where the range of environmental impacts of the alternatives at a specific site may not be within those considered in the GEIS for the LTR. This is similar to the approach that NYSERDA, as an NRC licensee, would need to meet if the license were not being held in abeyance. The Commission is satisfied that this approach is within the intent of the WVDP Act for the prescription of decommissioning requirements by NRC.

The WVDP Act does not address license termination for the site. The actual license termination for the site, if and when possible, will be conducted under the AEA, as amended. At the time of NRC license termination under the AEA (if license termination is pursued). NRC will need to conduct an environmental review to determine if an EIS is necessary to support actual license termination. The language from the draft policy statement was changed in the final policy statement to reflect the process described above.

H.3 Comment. The policy statement should not paraphrase the LTR and others' statements on West Valley.

H.4 Response. The Commission was attempting to provide context to the draft policy statement by paraphrasing the LTR or others' statements on West Valley. To avoid confusion or misinterpretation in the Final Policy Statement, it will contain a disclaimer to the effect that notwithstanding any paraphrasing of the LTR in the Policy Statement, the language of the LTR itself is controlling in determining how it is to be applied at West Valley. The paraphrasing of others' statements will be avoided.

1. Other Comments

I.1 Comment. What are the implications of the policy statement regarding NRC's policies regarding Native Americans.

- I.2 Response. NRC staff has examined the draft policy on decommissioning criteria for the WVDP and has not identified any implications in relation to the Commission's guidance regarding Native Americans. The Commission has directed the NRC staff to implement the spirit and letter of President Clinton's April 29, 1994, Executive Memorandum to ensure that the rights of sovereign Tribal governments are fully respected and to operate within a government-togovernment relationship with Federallyrecognized Native American Tribes. In addition, the staff has been directed to address Native American issues on a case-by-case basis, operating with Tribal Governments on a government-togovernment basis. In response to the interest expressed by the Seneca Nation of Indians in NRC activities at WVDP, the NRC staff has added the Seneca Nation to its service list which will provide the Seneca Nation with copies of documents and meeting notices related to NRC's activities at West Valley that the NRC may publically release. The NRC staff will address issues raised by the Seneca Nation of Indians in accordance with the Commission's guidance.
- I.3 Comment. One commenter claims that NRC is required by law to define "transuranic waste" for West Valley and determine the disposition of that waste.
- I.4 Response. Section 6(5) of the WVDP Act defines transuranic waste for the WVDP in terms of radioisotopes and the lower limit of concentration of those isotopes. It also states that NRC has the authority to prescribe a different concentration limit to protect public health and safety. NRC's position on this issue is detailed in a letter from M. Knapp, NRC, to W. Bixby, DOE, dated August 18, 1987. This letter states that, to demonstrate protection of public health and safety, the transuranic concentration of project wastes acceptable for on-site disposal will be such that, by analysis, safety requirements comparable to the performance objectives in 10 CFR part 61 subpart C are satisfied. The resulting calculated dose from the transuranic waste is to be integrated with all the other calculated doses from the remaining material at the NRC-licensed site to ensure that the LTR criteria are met. As with incidental waste, the Commission is not establishing a separate dose standard that applies solely to the transuranic waste.

V. Final Policy Statement

Statement of Policy

Decommissioning Criteria for the West Valley Demonstration Project (WVDP)

Under the authority of the WVDP Act, the Commission is prescribing NRC's License Termination Rule (LTR) (10 CFR part 20, subpart E) as the decommissioning criteria for the WVDP, reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is in compliance with the requirements of the LTR. The criteria of the LTR shall apply to the decommissioning of: (1) The High Level Waste (HLW) tanks and other facilities in which HLW, solidified under the project, was stored; (2) the facilities used in the solidification of the waste; and (3) any material and hardware used in connection with the WVDP. Also under authority of the WVDP Act, the Commission is issuing criteria for the classification of reprocessing wastes that will likely remain in tanks at the site after the HLW is vitrified, subsequently referred to as "incidental waste.

The resulting calculated dose from the WVDP at the West Valley site is to be integrated with all other calculated doses to the average member of the critical group from the remaining material at the entire NRC-licensed site to determine whether the LTR criteria are met. This is appropriate because the Commission does not intend to establish separate dose standards for various sections of the NRC-licensed site. The LTR does not apply a single public dose criterion. Rather, it provides for a range of criteria. Briefly stated, for unrestricted release, the LTR specifies a dose criterion of 25 mrem/yr total effective dose equivalent (TEDE) to the average member of the critical group plus as low as reasonably achievable (ALARA) considerations (10 CFR 20.1402). For restricted release, the LTR specifies an individual dose criterion of 25 mrem/year TEDE plus ALARA considerations using legally enforceable institutional controls established after a public participatory process (10 CFR 20.1403). Even if institutional controls fail, individual doses should not exceed 100 mrem/yr TEDE . If it is demonstrated that the 100 mrem/vr TEDE criterion in the event of failure of institutional controls is technically not achievable or prohibitively expensive. the individual dose criterion in the event of failure of institutional controls may be as high as 500 mrem/yr TEDE. However, in circumstances where restricted release is required, if the 100 mrem/yr TEDE criterion is exceeded, and/or the use of alternate criteria has

been determined, the area would be rechecked by a responsible government entity no less frequently than every 5 years and resources would have to be set aside to provide for any necessary control and maintenance of the institutional controls. Finally, the LTR permits alternate individual dose criteria of up to 100 mrem/yr TEDE plus ALARA considerations for restricted release, with institutional controls established after a public participatory process (10 CFR 20.1404). The Commission itself must approve use of the alternative criteria, after coordination with the U.S. Environmental Protection Agency (EPA) and after consideration of the NRC staff's recommendations and all public comments.10

The Commission also recognizes that decommissioning of the West Valley site will present unique challenges, which may require unique solutions. As a result, the final end-state may involve a long-term or even a perpetual license or other innovative approaches for some parts of the site where clean up to the LTR requirements are prohibitively expensive or technically impractical. It is important that all parts of the site be decommissioned to the extent technically and economically feasible. Therefore, in addition, the Commission expects decontamination to the maximum extent technically and/or economically feasible for any portion of the site remaining under a long term or perpetual license or for which an exemption from the LTR is sought. In sum, the Commission believes that for those portions of the site that are unable to demonstrate compliance with the LTR's restricted release requirements, the dose limits should be viewed as goals, in order to ensure that cleanup continues to the maximum extent that is technically and economically feasible. If complying with the LTR's restricted release requirements is technically impractical or prohibitively expensive, then an exemption from the LTR may be appropriate, provided that protection of the public and the environment can be maintained.

The Commission's application of the LTR to the WVDP is a two-step process:

(1) NRC is now prescribing the application of the LTR; and (2) after the completion of the site-specific Department of Energy (DOE)/New York State Energy Research and Development Authority (NYSERDA) Environmental

Impact Statement (EIS) 11 and selection of the preferred alternative, NRC will verify that the approach proposed by DOE is appropriate. The WVDP Act does not address license termination of the NRC license for the site, or portions thereof, which will be conducted (if license termination is possible and pursued) under the Atomic Energy Act (AEA) of 1954, as amended. If full or partial license termination of the NRC license is pursued, at that time NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

Decommissioning Criteria for the NRC-Licensed Disposal Area (NDA) and State-Licensed Disposal Area (SDA)

NRC will apply the criteria in the LTR to the NDA within the West Valley site, because the NDA is under NRC jurisdiction. However, the NDA presents some unique challenges in that some of this material contains significant quantities of mobile, long-lived radionuclides which could potentially remain in this facility. It is recognized that because of the nature of radioactivity at West Valley, reasonably foreseeable impacts might occur after 1000 years, under certain scenarios. Under NEPA, an evaluation of the reasonably foreseeable impacts is required. Therefore, the Commission believes that an analysis of impacts beyond 1000 years should be provided in the DOE/NYSERDA EIS which will be subject to public comment.

NRC does not have regulatory authority to apply the LTR criteria to the SDA adjacent to the WVDP site boundary, because the SDA is regulated by the State of New York. However, NRC recognizes that a cooperative approach with the State to the extent practical should be utilized to apply the LTR criteria in a coordinated manner to the NRC-licensed site and the SDA.

Decommissioning Criteria for License CSF-1 (NRC Site License)

The criteria in the LTR will also apply to the termination of NYSERDA's NRC license on the West Valley site after that license is reactivated. For those portions of the site covered by the WVDP Act, it is NRC's intent to authorize that any exemptions or alternate criteria authorized for DOE to meet the provisions of the WVDP Act will also apply to NYSERDA at the time of site license termination, if license termination is possible. The NRC site license termination is not addressed in the WVDP Act. Therefore the NRC site license termination is subject to the provisions of the Atomic Energy Act of 1954 as amended.

Use of Incidental Waste Criteria at West Valley

Section 6 (4) of the WVDP Act defines HLW as including both (1) liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste and (2) such other material as the Commission designates as HLW for the purposes of protecting the public health and safety. The Commission believes that practical considerations mandate early resolution of the criteria that will guide the classification of incidental waste. The vitrification of the wastes at West Valley is nearing completion, at which point DOE intends to close down the vitrification facility. To delay defining classification criteria for incidental waste could adversely impact the DOE as it may prove extraordinarily expensive after the vitrification facility is shut down to provide vitrification capacity for any additional waste that must be shipped elsewhere for disposal. Indeed, in light of the fact that the site will ultimately revert to control by NYSERDA under an NRC license, both NYSERDA and NRC have an interest in ensuring that the incidental waste determination need not be revisited.

In light of these considerations, the Commission is now providing the following criteria that should be applied to incidental waste determinations.

 The waste should be processed (or should be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical; and

(2) The waste should be managed so that safety requirements comparable to the performance objectives in 10 CFR part 61 subpart C, are satisfied.¹²

Consistent with the overall approach in applying the LTR to the WVDP and to the entire NRC-licensed site following

¹⁰ The material set out in the text is a brief summary of the LTR. Notwithstanding the words used in the text, the language of the LTR governs the metter.

¹¹ DOE has decided to descope the draft 1996 EIS into two separate EISs. DOE will be the lead sgency on the EIS that will address WVDP facility decontamination and management of waste currently stored at the site. NRC expects to be kept informed of progress as required under the DOE/NRC Memorandum of Understanding (MOU). DOE and NYSERDA will be the lead agencies on the EIS that will address decommissioning. NRC expects to participate as an EIS cooperating agency. Hereinafter, this second EIS where NRC will be a cooperating agency will either be referred to as the decommissioning EIS or the DOE/NYSERDA EIS, unless otherwise noted.

¹² The dose methodology used in 10 CFR part 61 subpart C is different from that used in the newer 10 CFR part 20 subpart E. However, the resulting allowable doses are comparable and NRC expects DOE to use the newer methodology in 10 CFR part 20 subpart E. part 61 is based on International Commission on Ratiological Protection Publication 2 (ICRP 2) and part 20 is based on ICRP 26.

conclusion of the WVDP, the resulting calculated dose from the incidental waste is to be integrated with all the other calculated doses from material remaining material at the entire NRC-licensed site.

Previous Burials Authorized Under 10 CFR Part 20

The "Statement of Considerations" for the LTR, Section C.3, Other Exemptions (62 FR 39074) provided that in regard to past burials the Commission "* would continue to require an analysis of site-specific overall impacts and costs in deciding whether or not exhumation of previous buried waste is necessary for specific sites. In addition, the general exemption provisions of 10 CFR part 20 are available to consider unique past burials on a case-by-case basis." The NDA contains significant amounts of buried radioactive material that was previously authorized under older provisions of part 20. This material will require appropriate evaluation as part of site license termination.

Environmental Analysis

An EIS is not needed at this step of the process of prescribing the LTR because the Commission is not establishing a new requirement for the site. This site is licensed to NYSERDA and, therefore, is already subject to the LTR by operation of the Commission's regulations. DOE in essence is acting as a surrogate for NYSERDA . The environmental impacts of applying the LTR to NRC licensees were evaluated in the Generic Environmental Impact Statement (GEIS), NUREG-1496, that supported the LTR. In promulgating the LTR, the Commission stated, in Section VI of the "Statement for Considerations" that it will conduct an environmental review to "determine if the generic analysis encompasses the range of environmental impacts at the particular site." The Commission further stated that it "will conduct an independent environmental review for each sitespecific decommissioning decision where land use restrictions or institutional controls are relied upon by the licensee or where alternative criteria are proposed" as it recognized that the environmental impacts for these cases cannot be analyzed on a generic basis. The environmental impacts from the application of the criteria will need to be evaluated for the various alternative approaches being considered in the process before NRC decides whether to accept the preferred alternative for meeting the criteria permitted by the LTR. NRC intends to rely on the DOE/ NYSERDA EIS for this purpose.

For NEPA purposes, DOE is considered the lead Federal agency. NRC, in view of its responsibilities under the WVDP Act, is considered a cooperating agency for this EIS and is participating in the development of the DOE/NYSERDA EIS. NRC does not anticipate the need to prepare its own duplicative EIS, since it can consider the environmental impacts described in the DOE/NYSERDA EIS in approving the particular decommissioning criteria for the WVDP under the LTR. Under this arrangement, if NRC is satisfied with the DOE/NYSERDA EIS, this EIS will fulfill the NEPA responsibilities for NRC under the WVDP Act. If NRC is not satisfied with the final DOE/NYSERDA EIS, then NRC will adopt as much of it as possible and modify or supplement it as necessary. In such a situation, NRC would publish its own draft EIS document for public review and comment before finalizing it. Once finalized, NRC's West Valley NEPA responsibilities would be fulfilled under the WVDP Act.

The WVDP Act does not address license termination for the site. License termination of the NRC license for the site, or portions thereof, is conducted (if license termination is possible) under the AEA. If NYSERDA pursues either full or partial license termination of the NRC license, at that time NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

Availability of Documents

NRC's final policy statement on decommissioning criteria for West Valley is also available at NRC's Public Electronic Reading Room link (http:// www.nrc.gov/NRC/ADAMS/ index.html) on NRC's home page (http:// www.nrc.gov). Copies of documents cited in this section are available for inspection and/or reproduction for a fee in the NRC Public Document Room, 11555 Rockville Pike, Room O-1F21 Rockville, MD 20852. The NRC Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays. Reference service and access to documents may also be requested by telephone (301-415-4737 or 800-397-4209), between 8:30 a.m. and 4:15 p.m.; or by e-mail (PDR@nrc.gov); fax (301-415-3548); or a letter (NRC Public Document Room, Mailstop O-1F13, Washington, DC 20555-0001). In addition, copies of: (1) SECY-98-251, "Decommissioning Criteria for West Valley;" (2) the transcript of the public meeting held January 12, 1999; (3) the Commission's SRM of January 26, 1999, concerning the January 12, 1999, public meeting on

SECY-98-251; (4) SECY-99-057, "Supplement to SECY-98-251, Decommissioning Criteria for West Valley;' " (5) the Commission's vote sheets on SECY-98-251 and SECY-99-057; (6) the Commission's SRM of June 3, 1999, on SECY-98-251 and SECY-99–057; (7) the draft policy statement issued December 3, 1999; (8) the transcript of the public meeting held January 5, 2000; and (9) the public comments on the draft policy statement can be obtained electronically on NRC's home page at the Commission's Activities link (http://www.nrc.gov/ NRC/COMMISSION/activities.html).

Dated at Rockville, Maryland, this 25th day of January, 2002.

For the Nuclear Regulatory Commission. Annette Vietti-Cook,

Secretary of the Commission. [FR Doc. 02-2373 Filed 1-31-02; 8:45 am] BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-250 and 50-251]

Fiorida Power and Light Company Turkey Point Plant, Units 3 and 4 Notice of Availability of the Final Supplement 5 to the Generic Environmental Impact Statement Regarding License Renewal for the Turkey Point Plant, Units 3 and 4

Notice is hereby given that the U. S. Nuclear Regulatory Commission (NRC) has published a final plant-specific Supplement 5 to the Generic Environmental Impact Statement (GEIS). NUREG-1437, regarding the renewal of operating licenses DPR-31 and DPR-41 for the Turkey Point Plant, Units 3 and 4, for an additional 20 years of operation. The Turkey Point Plant units are operated by Florida Power and Light Company (FPL). Turkey Point Plant is located in Dade County, Florida. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative methods of power generation. In Section 9.3 of the report:

The staff recommends that the Commission determine that the adverse environmental impacts of license renewal for Turkey Point Units 3 and 4 are not so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable. This recommendation is based on (1) the analysis and findings in the Generic Environmental impact Statement for License Renewal of Nuclear Power Plants. NUREG-1437; (2) the ER (Environmental Report) submitted by FPL; (3) consultation with other Federal, State, and local agencies; (4) the staff's own independent review; and

NRC FORM 659 (10-2000)

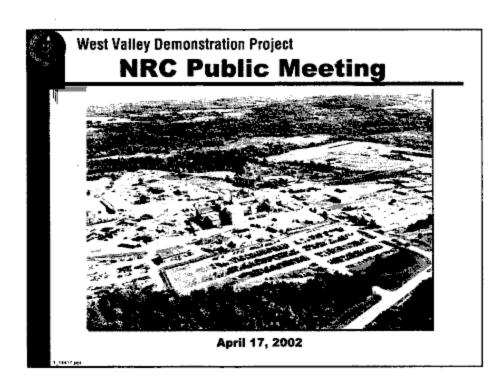


NRC PUBLIC MEETING FEEDBACK

Meeting Date:	Meeting Title:			
including public input into our de concerns that may affect a comm		public involvement e and practical manne sions about nuclear s	early in the regulatory process so er. This process is considered v safety. If you would like more in	o that safety rital to formation
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c. I am concerned about	t environmental issues			
d. I am concerned abou	t economic issues 1	 Were NRC's pres clear, understand 	sentations and material presente dable language?	d in
Were you familiar with the me	eeting topic prior to coming	a. Yes	b. No	
today? a. Very b. S	omewhat c. Not at all	 In your opinion, d a. Yes 	did the meeting achieve its stated b. No	d purpose?
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•		3. Has this meeting the topic?	helped you with your understan	ding of
c. Radio/TV		a. Greatly	b. Somewhat c. Not	at all
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Was sufficient notice given in		a. My conce	erns were directly addressed	
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How well do you feel you und regard to the issues discusse	derstand the NRC's role with d today?	c. I did not r	raise my concerns at this meetin	
	Somewhat c. Not at all	d. I raised m	ny concerns but am not satisfied	with the
 Were you able to find all of you wanted prior to the me 	the supporting information eting?		me allotted for discussion with N of today's meeting?	RC
a. Yes b. I did not try to find a	any information	a. Yes		
Was the purpose of the mee preliminary information you r		6. How satisfied are participated in the	e you overall with the NRC staff or e meeting?	who
a. Yes — b. N	No	a. Very	b. Somewhat c. Not	at all
In your opinion, were people clearly, completely and cand		 Were the next ste including how yo 	eps in this process clearly explain u can continue to be involved?	ined,
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If you would like someone to	contact you, please provide yo	our name and phor	ne number or email.	
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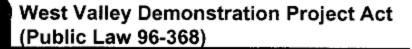


NRC Public Meeting

West Valley Demonstration Project Summary of Roles and Responsibilities

Alice Williams, Project Director
U. S. Department of Energy
West Valley Demonstration Project

2_14417.pgt



- Enacted October 1, 1980
- Under the WVDP Act, the Department of Energy shall:
 - · Solidify the high-level radioactive waste
 - · Develop containers suitable for permanent disposal
 - · Transport the solidified waste to a Federal Repository
 - Dispose of low-level radioactive waste and transuranic waste produced by solidifying the high-level radioactive waste
 - Decontaminate and decommission the tanks, facilities, and any material and hardware used in connection with the Project

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WVDP Act — Shared Responsibilities

- September 1981
 - Cooperative Agreement between DOE and NYSERDA
 - · Provided working arrangements
 - Supplemental Agreement executed in February 1991
 - NRC license CSF-1 amended so DOE could take control of the site
 - New York State pays 10% of Project costs; DOE pays 90%
- November 1981
 - DOE and NRC signed a Memorandum of Understanding to outline respective roles and responsibilities
- 1982
 - DOE assumes control of reprocessing facilities; WVNS selected as Prime Contractor



4_14417 ppr



Relationship and Interactions with the Nuclear Regulatory Commission

- Memorandum of Understanding between DOE and NRC (1981)
- NRC Region I Quarterly Monitoring Visits
- Cooperating Agency Status (established 1991) on the 1996 Draft Environmental Impact Statement
- Per the WVDP Act the tanks and facilities used will be decontaminated and decommissioned "in accordance with such requirements as the Commission may prescribe"
 - . Defined in February 1, 2002 NRC Final Policy Statement

5 14417 ag



How the WVDP Premises is Regulated

Air

- Radiological Emissions EPA
- Toxic Air Emissions NYSDEC

Water

- Stormwater and nonradiological point source discharges to surface water - NYSDEC
- Wetlands Army Corps of Engineers/NYSDEC
- Drinking Water NYSDOH





How the WVDP Premises is Regulated

Waste

- · Solid, Hazardous and Mixed
- Radiological/hazardous waste treatment, storage and disposal regulated by NYSDEC and EPA
 - RCRA corrective action order
 - Federal Facility Compliance Act consent order for mixed waste treatment



LLW shippin

r_18817.561



DOE Orders Mandate Operational Requirements for WVDP, Including...

- Radiological Waste Management Operations
- Environmental, Safety, Health and Quality Assurance
 - Environmental Monitoring Program ensures WVDP activities do not adversely impacting public health or the environment
 - Annual Site Environmental Report (data collected and evaluated since 1982)

6_10017-005

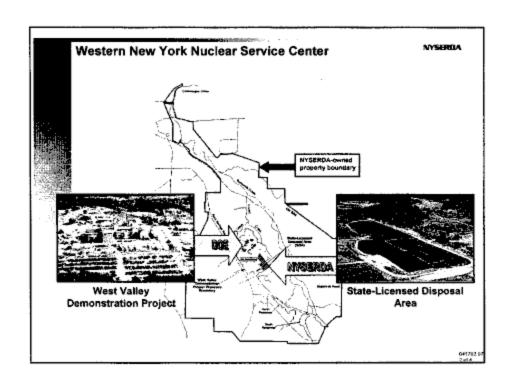


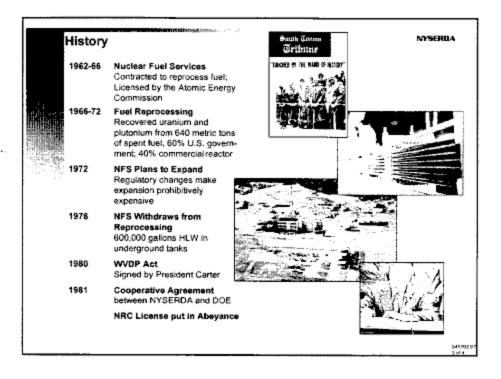
Path to WVDP Completion

- Significant decontamination and waste management activities
- Regulatory involvement essential
- Interaction of agencies and the public key

0_14417.pp







State-Licensed Disposal Area

NYSERDA

Waste disposals conducted by NFS from 1963-1975.

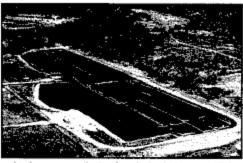
NYSERDA assumed management responsibility in 1983.

New York State Department of Labor

> Radioactive Materials License

New York State Department of Environmental Conservation

- > 6NYCRR Part 380 Permits
- RCRA Part A Pennit
- > RCRA Consent Order



A polymer cover and subsurface clay berrier have controlled water infiltration into the SDA trenches.

H1702.67

U.S. Nuclear Regulatory Commission Roles and Responsibilities at West Valley



Larry W. Camper, Chief Decommissioning Branch April 2002

What Are Our Goals?

- № Nuclear Regulatory Commission's (NRC's) Roles and Responsibilities
- **№** Commission's Final Policy Statement
- ➤ Comments/questions on Final Policy Statement

NRC Roles and Responsibilities

- → Atomic Energy Act (AEA)
 - ≈ 10 CFR Part 50 license
 - ➤ Inspection
 - ➣ Ensure public health and safety
 - ➤ License termination

3

NRC Roles and Responsibilities

- ➤ West Valley Demonstration Project Act (WVDPA)
 - Decontamination and decommissioning criteria
 - ≈ Review and consult on Department of Energy (DOE) plans
 - **™** Monitor activities
 - ➤ Preferred alternative meets decommissioning criteria?

NRC Roles and Responsibilities

- № National Environmental Policy Act (NEPA)
 - Cooperating Agency in Decommissioning Environmental Impact Statement (EIS)
 - ≥ LTR-GEIS/Site-specific analysis

NRC Roles and Responsibilities

- > Interface with stakeholders
 - **≫** Public
 - **₩** Rsgulaŧs#s
 - **№ DOE**
 - **≫NYSERDA**



NRC Performance Goals

- Maintain safety
- Increase public confidence
- ➤ Effective, efficient, and realistic decisions
- ≈ Reduce unnecessary regulatory burden

Decommissioning Criteria Background

- → Commission public meeting (1/12/99)
- Draft Policy Statement published for comment (12/3/99)
- № NRC public meeting on draft policy statement (1/5/2000)
- ► Final Policy Statement published (2/1/2002)

Implementation

- ➤ DOE to address decommissioning criteria
- ➤ EIS preferred alternative
- **≫** Several complex issues
- → Avoid speculation



9

License Termination Rule (LTR)

*™***Unrestricted use**

25 millirem/year+ALARA

(No restrictions)

≈Restricted Release

25 millirem/year+ALARA

(IC in place)

≈If IC fails

100 millirem/year

500 millirem/year (rare cases)

»Alternate Criteria (IC in place)

≈25 millirem/year; up to 100 millirem/year

License Termination Standards for Unrestricted Release (10 CFR 20.1402)

- Total Effective Dose Equivalent (TEDE)

 (25 millirem/year) and is As Low As Reasonably
 Achievable (ALARA)
- Average member of the critical group
- All path ways
- ≈ Period of performance 1,000 years

11:

Perspective on Dose

- Average background radiation
 - ≈ 360 millirem/year
- ≈ Public dose Subpart D (Part 20)
 - ≈ 100 millirem/year
- ➤ Flight across U.S.
 - ≈ 3-4 millirem
- 2 Chest X-Ray
 - ≥ 20 millirem

Natural Background

➤ Radon 200 millirem/year
➤ Cosmic 27 millirem/year

Terrestrial 28 millirem/year

➤ Internal 39 millirem/year

➤ Consumer products 5 to 13 millirem/year

➤ Environment 0.06 millirem/year

➤ Medical:

Diagnostic X-Rays 39 millirem/year
 № Nuclear medicine 14 millirem/year

Taken from: United States Nuclear Regulatory Commission. Site Access Training Manual (October 1999)

Commission's Final Policy Statement on Decommissioning Criteria for West Valley Demonstration Project



Chad Glenn Project Manager Decommissioning Branch April 2002

Policy Statement Topics

- ≈ License Termination Rule (LTR)
- → Application of LTR to WVDP
- ➣ Decommissioning Criteria
- Incidental Waste
- ≈ Previous Authorized Burials
- ▶ Decommissioning of West Valley
- ➤ Environmental Analysis



13

License Termination Rule (LTR)

- The License Termination Rule (LTR) is standard criterion for termination.
- ➤ LTR provides range of release criteria:
 - → Unrestricted Release
 - ➤ Restricted Release

The Application of LTR to WVDP

- ➤ Two step process:
 - ™NRC prescribes the LTR
 - ➣Independently evaluate preferred alternative satisfies criteria after completion of EIS

10

Decommissioning Criteria

- License Termination Rule (LTR) as decommissioning criterion
 - -- Wesi Valley Bemonstration Project (WVDP)
 - **™** NRC-Licensed site

Decommissioning Criteria (Cont.)

- ➤ WVDPA specifies NRC's criteria:
 - ™ High Level Waste (HLW) tanks
 - > Facilities used in solidification of waste
 - Material and hardware
- ➣ Site/Facilities, such as:
 - ™ NRC-Licensed Disposal Area (NDA)
 - ➤ State-Licensed Disposal Area (SDA)

19

Incidental Waste

- ≈ Early resolution of criteria is important.
- Incidental waste criteria:
 - ™ Remove key radionuclides to maximum extent technically and economically practical.
 - Safety requirements comparable to the performance objectives of LLW disposal sites (Part 61).
- Resulting calculated doses integrated with all other calculated doses
- ≈ EIS to consider impacts of incidental waste

Previous Authorized Burials

- ≈ Site-specific impacts and costs
- ≈ Consider unique burials (case-by-case)
- > NDA contains buried radioactive material
- ≈ EIS to evaluate disposition of previous burials

2

Decommissioning of West Valley

- ➤ Complex and unique site
- Decommissioned to extent technically and economically feasible
- Release requires protection of public health and safety

Environmental Analysis

- * LTR does not establish new requirements
- ≈ Site-specific decommissioning decision
- ➤ Evaluate various alternatives
- ≈ EIS analysis of impacts beyond 1,000 years
- **≫** NRC reliance on quality EIS

West Valley

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

> Paul A. Giardina, Chief Radiation & Indoor Air





Chronology of EPA's Recent Involvement at West Valley

•	May 1999	Letter to DOE on the development of a supplemental EIS
•	January 2000	EPA statement concerning the draft policy statement
•	May 2000	Discussion with NRC at the Conference of Radiation Control Program Directors (CRCPD) Annual

Meeting

 August 2000 Annual radiation program review with NYSDEC & NYSDOH



Chronology, cont'd

Conference call among regulators October 2000

GAO report: "Agreement Among May 2001

Agencies Responsible for West Valley Site Is Critically Needed"

DOE annual West Valley regulators July 2001

roundtable

Letter to NRC regarding 25 mrem &

CERCLA risk range



Chronology, cont'd

Staffs brief their respective · July - November agencies 2001

EPA, NRC, NYSDEC & Nov. 2001 - April

NYSDOH develop the Regulators 2002

Communication Plan

Public meeting to discuss the April 17, 2002

Regulators Communication Plan



EPA's Responsibilities

- Atomic Energy Act
- Clean Air Act
- Superfund/CERCLA (Comprehensive Environmental Response, Compensation & Liability Act)
- National Environmental Policy Act
- Resource Conservation & Recovery Act
- Safe Drinking Water Act



EPA's Role at West Valley

- →Cooperating Agency in the development of the Decommissioning EIS
- →Provide early input at West Valley to the public, regulators, DOE & NYSERDA
- →Oversight of State delegated EPA programs



NRC's WEST VALLEY PUBLIC MEETING

NYSDEC WEST VALLEY REGULATORY ROLES AND RESPONSIBILITIES

Presented by Paul J. Merges, Ph.D.

3/17/02 West Valley Public Mtg

New York State Department of Environmental Conservation



NYSDEC West Valley Staff

Tim Rice, Tim DiGiulio, Jack Krajewski, Radiation Program

(518)402-8579 (315)426-7471

RCRA Program Regional staff

(716)851-7220

3/17/02 West Valley Public Mtg



DEC ROLE AT WEST VALLEY

Protection of the Environment and Public Health of the State.

Ensuring Compliance with Applicable State Regulations.

Working Cooperatively with the Other Regulators to Ensure All Closure Requirements Are Met.

Ensure that the Public is Informed and Involved in the Site Remedial Process.

3/17/02 West Valley Public Mtg

3

New York State Department of Environmental Conservation



Broad range of regulatory responsibilities.

- Resource Conservation and Recovery Act (RCRA)
- · Radiological Protection
- Clean Water Act (CWA)
- Clean Air Act (CAA)
- Endangered Species Protection
- Stream Protection
- Wetlands Protection
- Other

3/17/02 West Valley Public Mtg



General Scope of Authority

State-licensed Disposal Area (SDA) – The State, through regulation by the DEC and DOL, has sole regulatory authority.

Western New York Nuclear Service Center – RCRA, CAA, and CWA authority.

3/17/02 West Valley Public Mtg

5

New York State Department of Environmental Conservation



RADIOLOGICAL

Permits for ongoing activities at the SDA

- Monitoring and Maintenance Permit
- Air Discharge Permit

NYS Low Level Radioactive Waste Management Act (LLRWMA)

3/17/02 West Valley Public Mtg



Low-level Radioactive Waste (LLRW) Transportation

LLRW Disposal Facilities:

- · Site and Disposal Method Certification
- Operation from Design through Closure and Institutional

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7

New York State Department of Environmental Conservation



RCRA (Resource Conservation and Recovery Act)

RCRA Part 373 Interim Status Permit

- Current Operations.

RCRA Corrective Action Consent Order with NYSERDA and DOE

- Past Operations.

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В



FFCA (Federal Facilities Compliance Act)

CWA (Clean Water Act)

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9

New York State Department of Environmental Conservation



CAA (Clean Air Act)

Endangered Species Protection

Stream Protection

Wetlands Protection

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Other Regulatory Responsibilities

- Closure of Abandoned Oil and Gas Wells
- Mined Lands Regulations
- Storage Tank Closure Requirements
- Solid Waste Disposal Requirements

3/17/02 West Valley Public Mtg

NYSDOH

West Valley Site

NYSDOH

- GARY BAKER, CHP
- Chief, Field Operations Section
- Bureau Environmental Radiation
- Protection, Center for Health
- · 315 426 7629
- Adela Salame-Alfie, Ph.D. Dir.
- Steve Gavitt, CHP, Asst. Dir.

NYSDOH Objective

- Protection of the Public Health
- Public Health Law
- Promulgation of Regulations

NYSDOH Responsibilities

- Regulatory Role
 Advisory Role

NYSDOH Regulatory Role

- SDWA Part 5
- Theoretical regulatory role if NYSDEC decided not to implement its' regulations

NYSDOH Advisory Role

- Review and agreement with DEC
- Participation with other
 Regulatory Agencies

NYSDOH Communications Plan items

- Regulatory Matrix Table I
- Communications Plan Page 4
- NYSDOH lead Agency for Protection of Public Health
- NESDEC Lead for Decommissioning Project
- Regulation of Water Supply Operators

NYSDOH Activities

- Environmental Monitoring
- Split samples
- Review of results and Public
 Doses

U.S. Nuclear Regulatory Commission Roles and Responsibilities at West Valley



Larry W. Camper, Chief Decommissioning Branch April 2002

What Are Our Goals?

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- ~ Commission's Final Policy Statement
- ➤ Comments/questions on Final Policy Statement

NRC Roles and Responsibilities

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 - → License termination

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- ➤ National Environmental Policy Act (NEPA)
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 - ~ LTR-GEIS/Site-specific analysis

NRC Roles and Responsibilities

- ≈ Interface with stakeholders
 - **≫** Public
 - ≈ Regulators
 - ≈ DOE
 - **≈NYSERDA**



NRC Performance Goals

- ₩ Maintain safety
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- » Effective, efficient, and realistic decisions
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- → Several complex issues
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> Inher-From United States Vertex Sugalatory (Commission, Size Server Fraining Viernal (Detailer 1999)

17

Commission's Final Policy Statement on Decommissioning Criteria for West Valley Demonstration Project



Chad Glenn Project Manager Decommissioning Branch April 2002

Policy Statement Topics

- ~ License Termination Rule (LTR)
- ≈ Application of LTR to WVDP
- ~ Decommissioning Criteria
- → Incidental Waste
- ➤ Previous Authorized Burials
- ≈ Decommissioning of West Valley
- → Environmental Analysis



License Termination Rule (LTR)

- The License Termination Rule (LTR) is standard criterion for termination.
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- ➤ Two step process:
 - ≫NRC prescribes the LTR
 - ≈Independently evaluate preferred alternative satisfies criteria after completion of EIS

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Decommissioning Criteria

- License Termination Rule (LTR) as decommissioning criterion
 - ➤ West Valley Demonstration Project (WVDP)
 - ≈NRC-Licensed site

Decommissioning Criteria (Cont.)

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Decommissioning of West Valley

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Environmental Analysis

- » LTR does not establish new requirements
- ≈ Site-specific decommissioning decision
- ➤ Evaluate various alternatives
- ≈ EIS analysis of impacts beyond 1,000 years
- → NRC reliance on quality EIS

	-

Vincent A. Delorio, Esq., Chairman William M. Flynn, President Paul L. Piciulo, Ph.D., Director

West Valley Site Management Program, 10282 Rock Springs Road, West Valley, NY 14171-9799 (716) 942-4387 • Fax: (716) 942-2148 • www.nyserda.org

Comments of the New York State Energy Research and Development Authority on the Nuclear Regulatory Commission's Final Policy Statement 4/17/02

Application of the License Termination Rule (LTR) to the West Valley Demonstration Project (WVDP) and the Entire NRC-licensed Site

The final policy statement prescribes the LTR as the decommissioning criteria for the WVDP and states:

"The resulting calculated dose from the WVDP at the West Valley site is to be integrated with all other calculated doses to the average member of the critical group from the remaining material at the entire NRC-licensed site to determine whether the LTR criteria are met. This is appropriate because the Commission does not intend to establish separate dose standards for various sections of the NRC-licensed site."

Based on this statement, it is unclear whether the NRC intends to separately evaluate the dose contribution from the WVDP. If, to complete the two-step process, NRC does intend to separately evaluate the dose from the WVDP it is unclear what fraction of the dose limits will be granted to the WVDP versus the non-WVDP portion of the NRC-licensed site. This issue needs to be clarified.

In addition, if NRC does intend to separately evaluate the dose from the WVDP, then NYSERDA is concerned about how NRC will define which facilities, property and contamination are part of the WVDP for the purposes of this evaluation. NYSERDA has previously stated its position that DOE is required under the WVDP Act to decontaminate and decommission all premises and facilities within the 200-acre fence line other than the State-licensed Disposal Area and the waste disposed of in the NRC-licensed Disposal Area prior to commencement of the Project. (See attached letter from Hal Brodie to Commissioner Jeffrey S. Merrifield, March 1, 1999.)

Waste Incidental to Reprocessing (WIR) Determination

NYSERDA is concerned about the approach to waste incidental to reprocessing determinations that was announced by NRC in the Final Policy Statement. First, NRC's involvement and role in the process for declaring waste incidental to reprocessing at West Valley should be further clarified. NYSERDA has stated on numerous occasions that WIR determinations at West Valley are NRC decisions, not DOE decisions. Unlike other DOE facilities where the WIR criteria have been applied, West Valley is not a DOE-owned facility. DOE has repeatedly stated its intent to close facilities (including the high-level waste tanks) in place at West Valley and then return the

site to New York State control and NRC regulation. DOE is preparing, or will be preparing WIR determinations for in-situ closure of various West Valley facilities (i.e., high-level waste tanks, process building, vitrification facility, etc.). Other than the requirement to include the impacts of the residual source term in the environmental impact statement performance assessment, NRC has not established how they intend to approve or otherwise be involved in these determinations. It is essential that NRC establish and make public a procedure for NRC decision-making on this issue.

In addition, in the Final Policy Statement, NRC eliminated any concentration criteria from the WIR determinations at West Valley. This is inconsistent with and less stringent than the criteria that have been set for other DOE facilities. For instance, in its decision on the WIR determination for Hanford (Denial of Petition for Rulemaking: States of Washington and Oregon, 58 FR 12342), NRC specifically required that the waste "not exceed the applicable concentration limits for Class C low-level waste as set out in 10 CFR Part 61." NRC has failed to set forth any reason for eliminating this concentration criterion at West Valley.

Flexibility and NRC Oversight

The Policy Statement emphasized the flexibility that is present in the LTR without giving site specific guidance on the technical, regulatory, and public processes through which the policy statement and its inherent flexibility will be implemented or how NRC will oversee the decommissioning effort. NYSERDA believes that to retain public confidence, NRC must serve its statutory role to review and consult under the Act in a thorough and transparent manner. NYSERDA strongly encourages NRC to establish a process for NRC to review key documents, such as characterization studies, engineering studies, and performance assessment modeling, with the same rigor that NRC reviews license applications under the Atomic Energy Act. We are pleased that USNRC, USEPA, NYSDEC and NYSDOH have acknowledged in this morning's public meeting the need for further definition of the process and we look forward to working with you on that task.

NYSERDA New York State Energy Research and Development Authority

William R. Howell, Chairman F. William Valentino, President

Corporate Plaza West, 288 Washington Avenue Extension, Albany, NY 12203-6399 (518) 862-1090 • Fax: (518) 862-1091 • http://www.nyserda.org/

March 1, 1999

The Honorable Jeffrey S. Merrifield Nuclear Regulatory Commission Washington, D.C. 20555-0001

Dear Commissioner Merrifield:

During the Commission meeting of January 12, you expressed some concerns about the scope of the West Valley Demonstration Project (WYDP) and how it might affect the Commission's role at the West Valley site. Paul Piciulo and I briefly outlined the position of the New York State Energy Research and Development Authority (NYSERDA) on this issue, but the meeting did not seem the appropriate time to engage in extended discussion of this important question. Therefore, I am writing to elaborate on our discussion at the meeting.

While the issue of the extent of the Department of Energy's obligations under the WVDP Act is of the utmost importance to New York State, and while NYSERDA believes that the Commission should be aware of and informed about this matter, we do not believe the issue is, or should be, before the Commission for decision. The staff paper on Decommissioning Criteria for West Valley (SECY-98-251) appropriately proposes criteria for the site as a whole. NYSERDA has consistently taken the position that it would be technically infeasible and legally indefensible for the Commission to attempt to establish one set of criteria for the Department of Energy under the WVDP Act and another set of criteria that would apply to NYSERDA under the Part 50 license. We strongly urge the Commission to recognize that "decommissioning" must be given the same meaning, whether applied to a federal agency or to a licensee, and to adopt this aspect of the staff paper.

As with any statute, to interpret the meaning of the West Valley Demonstration Project Act one must look first to the language of the Act itself. While you correctly pointed out that it was the need to solidify the liquid high-level waste that provided the main impetus for the Act, the expressed obligations of the Department of Energy under the Act go well beyond solidification and transportation of the high level waste to a federal repository. The Secretary of Energy is also directed to dispose of the low-level and transuranic waste produced by solidification [Section 2(a)(4)] and to decontaminate and decommission the tanks and other facilities used to store the high-level waste, the materials and hardware used in connection with the project, and the facilities used in solidification of the waste [Section 2(a)(5)].

The decontamination and decommissioning aspect of the Department's mission at West Valley is

and always has been a critical issue for the State of New York. It was always anticipated that the Department would use and clean up as much of the site as is reasonably consistent with the solidification mission. This is demonstrated by the legislative history. In colloquy, Congressman Lundine stated:

The facilities and hardware already at the center, which will be contributed as part of the New York State share of this project and utilized by the Federal Government, will make this a cost-effective undertaking that otherwise would require a large infusion of taxpayer dollars to provide similar facilities and hardware at any other site elsewhere around the country.

Congressional Record, September 15, 1980, H. 8766.

Support for the proposition that Congress intended that the Department conduct extensive decontamination and decommissioning can also be found in the statement of Congressman Kemp, who said in colloquy:

The bill now before us establishes a Federal demonstration project to solidify the highlevel wastes at the West Valley Center and move the wastes to a Federal repository for long-term burial. The site is then to be decommissioned and decontaminated, and a plan for the safe removal of the wastes must be prepared.

Congressional Record, September 15, 1980, H. 8767 (emphasis added).

But perhaps the most persuasive interpretation of the Department's decontamination and decommissioning obligations under the Act is the Department's own contemporaneous interpretation as reflected in the Cooperative Agreement negotiated between the Department and NYSERDA. Among many references in the Agreement to the Department's obligation to decontaminate and decommission is Section 4.03, which states:

Condition on Surrender. On the Project Completion Date, the Department shall surrender to the Authority

(a) the Process Plant and

(b) such other Project Premises, Project Facilities and any other non-federally owned facilities, material, and hardware which it uses in carrying out the Project

decontaminated and decommissioned in accordance with the Act and such requirements as the Commission may prescribe.

This section should be read with section 4.02 of the Agreement which states:

The Department shall use the Process Plant in carrying out the Project. Project Premises and Project Facilities shall be used solely for the purpose of carrying out the Project and for no other purpose whatsoever, except as expressly provided in this Agreement.

As I indicated at the Commission meeting, the Department insisted upon, and received the right to exclusive use and possession of the entire 175-acre Project Premises to use in carrying out the Project. Since obtaining use and possession of the Premises, the Department has in fact used the entire Premises in connection with solidification for such purposes as treatment, storage, transportation, security, and buffer.

These various sources support, and are entirely consistent with, the position that NYSERDA stated at the meeting, which is that the Department is responsible, under the West Valley Demonstration Project Act, for decontaminating and decommissioning all premises and facilities within the 200- acre fence line other than the State-licensed Disposal Area and the waste disposed of in the Nuclear Regulatory Commission-licensed disposal area prior to commencement of the Project.¹

If you have any additional questions, or would like any further documentation on this issue, please do not hesitate to contact me at 518-862-1090, extension 3280.

Sincerely,

Hal Brodie Deputy Counsel

cc: Hon. Shirley Ann Jackson
Hon. Nils J. Diaz
Hon. Greta J. Dicus
Hon. Edward McGaffigan, Jr.
John T. Greeves
Barbara A. Mazurowski, DOE
Carl Johnson, DEC
Duane J. Ray, Seneca Nation
West Valley Citizen Task Force

¹ The federal government has responsibilities above and beyond those delineated in the West Valley Demonstration Project Act. Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the federal government, as generator of the majority of the waste contained in the two disposal areas, is responsible for a substantial portion of the cleanup of those areas.

West Valley Citizen Task Force

April 17, 2002

Richard A. Meserve, Chairman U.S. Nuclear Regulatory Commission Washington, D.C. 20555

RE: Disagreements With the Final Policy Statement Establishing Decommissioning Criteria for the West Valley Demonstration Project

Dear Chairman Meserve:

In verbal testimony given at the public briefing on January 12, 1999, and in written comments dated December 22, 1998, and January 5, 2000, the West Valley Citizen Task Force (CTF) expressed general agreement with the U.S. Nuclear Regulatory Commission's (NRC) application of the License Termination Rule (LTR) as the decommissioning criteria for the West Valley Demonstration Project (WVDP). However, the CTF specifically detailed numerous objections we had with earlier wording and provisions in the draft policy statements which would have: 1) delayed NRC's prescription of definitive decommissioning criteria until after the current West Valley Environmental Impact Statement (EIS) process was completed: 2) allowed residual high level waste (HLW) at the site to be classified as incidental waste; and 3) allowed the U.S. Department of Energy (DOE) to depart from the LTR standards if they simply developed a rationale indicating that a particular cleanup alternative was considered technically infeasible or prohibitively costly. We clearly urged the NRC to reject any such approach and we were guardedly optimistic that the final policy statement would incorporate our recommendations and fulfill the NRC's obligation to prescribe a definitive set of criteria for decommissioning at the West Valley site, per the WVDP Act.

Consequently, we are extremely disappointed that the final policy statement as published in the Federal Register on February 1, 2002, contains provisions which: 1) create a "two-step process" whereby NRC will allow DOE to select a preferred alternative following completion of the EIS, and then "...verify that the approach proposed by DOE is appropriate: "2) establish new criteria for making incidental waste determinations which effectively allow DOE to re-classify much residual HLW and ultimately dispose of it on site; and 3) will allow exemptions from the LTR criteria (i.e., higher human exposure dose limits) should the DOE choose to select a particular clean-up alternative, due to cost considerations. It should be noted that this would be first time that federal HLW would be left on non-federal land.

In short, the CTF now believes that the Commission has failed to fulfill its mandate from Congress of prescribing decommissioning criteria for the WVDP. A "criterion" is defined as "...a standard, rule, or test by which something can be judged." The Policy Statement, as issued, provides for outright exemptions from the LTR and re-evaluation following completion of the EIS. It is even stated therein that "... for those portions of the site that are unable to demonstrate compliance with the LTR's restricted release requirements, the dose limits should be viewed as goals...". Goals are not criteria! The policy only purports to establish criteria. The unusual number of qualifying provisions serve to diminish the NRC's relevance in the EIS process and reduce the proposed LTR criteria to mere goals which may, or need not, be adhered to by DOE. In our public briefing comments dated December 22, 1998, we stated our resolute opposition to the NRC extending DOE this form of de facto authority in establishing the cleanup standards for the Project.



We question whether the WVDP Act authorizes the NRC to establish incidental waste determination criteria for the Project. We are increasingly concerned about revised DOE plans to accelerate decommissioning activities when the respective long-term responsibilities of the federal and state governments in the clean up and monitoring of the West Valley site have not yet been established. The CTF, therefore, necessarily opposes any actions which serve to facilitate premature withdrawal of DOE from the Project before all WVDP Act and National Environmental Policy Act (NEPA) obligations are fulfilled. Consequently, we request clarification of the Commission's authority for providing incidental waste determination criteria for West Valley, and documentation of any procedural or public participatory requirements which normally might apply to such an action.

In addition, we request formal definitions of "engineered barriers" and "institutional controls" (ICs) as they relate to the LTR and EIS analyses. As the NRC has previously acknowledged, the West Valley site presents unusual challenges should long-term ICs need to be relied upon as part of the preferred alternative for the site. The Commission indicates in the Policy Statement that it need not conduct an independent environmental review even though the generic EIS supporting the LTR requires that NRC "...conduct an independent environmental review for each site-specific decommissioning decision where land use restrictions or ICs are relied upon by the licensee...". Whether the NRC conducts an independent review or not, we believe it is crucial that formal guidance regarding ICs be issued because of: 1) the LTR dose criteria, should ICs fail; and 2) the presumptive failure of ICs in long-range EIS analyses (i.e. a few hundred years and beyond). Some views on this subject were presented in responses A.6 and B.6 in Section IV (Summary of Public Comments and Responses to Comments) of the Policy Statement, but definitive guidance is clearly necessary to ensure the proper evaluation of alternatives and completion of the EIS.

The CTF appreciates the effort put forth by the Commission and NRC staff over the past several years in developing this policy for West Valley. Unfortunately we cannot agree with the inordinate level of "flexibility" which has been built into the policy. The result is a document which neither ensures an adequate level of protection to local residents and the region, nor provides any definitive limitations on the range of clean-up alternatives which can still be considered by DOE. As the Policy Statement now reads, NRC will render no actual decision regarding any alternative until after the EIS has been completed. Again, we feel that this compromises NRC's integrity and express authority in providing impartial regulatory oversight of DOE activities, and fails to satisfy the Commission's legislated obligation for "prescribing" WVDP decommissioning criteria. Consequently the Final Policy Statement may be subject to a legal challenge, and certainly should be subject to Congressional scrutiny and possible rejection.

We expect the Commission to reconsider their position on this matter to include the consensus views of the community and local governmental interests, as represented by the CTF membership.

Respectfully submitted,

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Eric Wohlers on behalf of the

West Valley Citizen Task Force

ce: NRC Commissioner Greta Dicus

NRC Commissioner Nils Diaz

NRC Commissioner Edward McGaffigan

NRC Commissioner Jeffrey Merrifield

U.S. Senator Hillary Rodham Clinton

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COALITION ON WEST VALLEY NUCLEAR WASTES Sharp Street 'East Concord, NY 14055 ' (716) 941-3168

April 14, 2002

Richard Meserve, Chairman U.S. Nuclear Regulatory Commission Washington, D.C. 20555

Dear Chairman Meserve:

We were encouraged to hear in late January that NRC was issuing the Final Policy Statement for West Valley decommissioning requirements. However, we find the contents of those requirements to be very unsatisfactory. They are weak and unprotective compared to what NRC had already adopted in draft form as its West Valley requirements, as seen in the version of SECY-99-057 that the Commissioners adopted unanimously in 1999, the resulting Draft Policy Statement that was published in the Federal Register, and subsequent NRC staff presentations to the Advisory Committee on Nuclear Waste. These discrepancies aside, we find that the Final Policy Statement contains some rather serious defects as outlined below. Please see especially the legal issues raised in the second and third sections of this letter. We think all of these concerns are sufficiently serious to warrant your attention and the attention of the other Commissioners.

Excessive flexibility and lack of definiteness

We are concerned that the "flexible approach" of the Final Policy Statement is too vague to set limits on DOE's decommissioning alternatives. We believe the meaning of the West Valley Demonstration Project Act is clear: DOE's mandate to decontaminate and decommission shall be bounded by requirements set by NRC, and those requirements shall be sufficiently definite that any given alternative may be judged "in accordance" or "not in accordance."

NRC's emphasis on flexibility, including potential exemptions and NRC's willingness to consider alternatives that do not fully comply with the License Termination Rule (LTR) criteria, is likely to confuse any determination of whether a given alternative is "in accordance" or "not in accordance."

Federal Register, 67 FR 5003-5012 (February 1, 2002).

^{2 64} FR 67952-54 (December 3, 1999).

Jack D. Parrott, "NRC's Draft Policy Statement on Decommissioning Criteria for the West Valley Demonstration Project and West Valley Site," presentation to ACNW, June 13, 2000; Amy M. Snyder, "Final Draft West Valley policy Statement: Significant Issues and NRC Staff Response," presentation to ACNW, October 17, 2000.

^{4 67} FR 5004 (February 1, 2002).

⁵ Ibid., entire RH column on p. 5004; also part of LH column on p. 5011.

NRC's reluctance to set the LTR as clearcut requirements for West Valley is puzzling and worrisome. NRC waffles on whether departures from the LTR would be contingent on portions of the site being "unable to demonstrate compliance" or merely on compliance being "technically impractical or prohibitively expensive." NRC's reason for excusing strict compliance with the LTR ("decommissioning of the West Valley site will present unique challenges") is not reassuring, inasmuch as it suggests that citizens living near such sites deserve less protection than other Americans. The LTR, after all, is not site-specific; it sets minimum safe standards that decommissioned sites elsewhere are expected to meet. Since the LTR is expressed in terms of maximum allowable radiation doses, it makes little sense to allow higher doses at sites that "present unique challenges." Indeed, given the greater difficulty of making reliable long-term predictions at such sites, and given the fact that radiation doses at decommissioned sites are typically projected into the future, one might expect the allowable dose limits at those sites to be lower, not higher, than the LTR dose limits.

Perhaps some comfort can be taken from footnote 10 on page 5011 of the *Federal Register* notice, where NRC indicates that "the language of the LTR governs this matter." The LTR may thus override some of the more extravagant language about flexibility, exemptions, unique solutions, and innovative approaches that appears in the *Federal Register* notice.

It should be noted that the NRC, in adopting the LTR in 1997, specifically expressed a preference for usualing with difficult sites—under the aegis of a fure rather than as exemptions." Thus, NRC already provides flexibility for difficult sites within the LTR through alternate criteria (10 CFR 20.1404) and a two-tier dose "cap" (10 CFR 20.1403(e)). These flexible features of the LTR allow radiation doses somewhat higher than the limit normally imposed by the LTR, but they still fall under the umbrella of the LTR. NRC now suggests that even higher doses (beyond the LTR) might be allowed at West Valley through flexibility, exemptions, unique solutions, and innovative approaches. We do not believe that West Valley dose limits beyond the LTR would be warranted or wise.

In adopting the LTR in 1997, NRC specifically stated that the LTR was "intended to provide a clear and consistent regulatory basis for determining the extent to which lands and structures can be considered to be decommissioned." NRC's decommissioning requirements for West Valley fail badly in this respect. While the West Valley requirements "apply the LTR," they also emphasize that the strict requirements of the LTR can be avoided through flexibility, exemptions, unique solutions, and innovative approaches. The end result (in our opinion) is the absence of a clear and consistent basis for determining the extent to which lands and structures can be considered to be decommissioned at West Valley.

^{6 67} FR 5011 (February 1, 2002), emphasis added.

Ibid.

^{8 62} FR 39066 (July 21, 1997).

^{9 62} FR 39057 (July 21, 1997).

^{10 67} FR 5003 (February 1, 2002).

NRC may believe that its offers of flexibility, exemptions, unique solutions, and innovative approaches are well-constrained by the requirement that "public health and safety are protected" or the requirement that "it can be rigorously demonstrated that protection of the public health and safety for future generations could be reasonably assured..." We disagree. It makes no sense to relax strict limits on radiation dose based on assurances that public health, safety, and the environment can be protected. (What would be the purpose of limits on radiation dose, if not to protect health, safety, and the environment?) We recognize that NRC may argue otherwise, but this simply illustrates our point that NRC's decommissioning requirements for West Valley fail to provide a clear and consistent basis for determining the extent to which lands and structures can be considered to be decommissioned. NRC's decommissioning requirements for West Valley will continually require interpretation from NRC as to whether any given flexible approach is "in accordance" or "not in accordance." This is not a clearcut standard for decommissioning.

Incidental Waste

As part of its West Valley decommissioning requirements, NRC has "decided to issue incidental waste criteria to clarify the status of and classify any residual wastes present after cleaning of the high-level radioactive waste (HLW) tanks at West Valley." We are concerned that this plan by NRC is illegal.

NRC's statement about what it has "decided" is admittedly vague and may be intended merely as "the Commission's view for incidental waste" or as "advice to DOE," in which case NRC may simply be encouraging DOE to classify HLW as "incidental" in violation of the law. In either case, we would like to clear up and eliminate any NRC role in this possible illegal action.

NRC mentions both Section 6(4) of the West Valley Demonstration Project Act and a series of NRC rulemakings in relation to its decision on incidental waste, ¹⁶ as if one of these might provide legal authority for reclassifying West Valley HLW as incidental waste. NRC's purpose here is unclear, as NRC simply mentions the Act and rulemakings in passing, without actually claiming that they provide the necessary legal authority. In fact, neither the Act nor the NRC rulemakings provides legal authority for reclassifying any of the West Valley waste as "incidental."

Any reclassification of West Valley waste as "incidental" is contrary to the West Valley Demonstration Project Act. Such reclassification would be illegal, regardless of whether

¹¹ Ibid.

¹² Ibid.

^{13 67} FR 5005 (February 1, 2002).

^{14 67} FR 5009 (February 1, 2002).

¹⁵ See 67 FR 5005 and 5009 (February 1, 2002), where NRC refers to "advice" provided to DOE regarding "incidental" waste at Hanford and/or Savannah River. See also Amy M. Snyder, presentation to ACNW, October 17, 2000, Frame 7.

^{16 67} FR 5009 (February 1, 2002).

NRC intends to make the reclassification itself or merely encourages DOE to do so. Neither NRC nor DOE has the authority to override the West Valley Demonstration Project Act.

Section 6(4) of the West Valley Demonstration Project Act defines "high level radioactive waste" (HLW) and allows NRC to include "such other material as the Commission designates" in the HLW category. In other words, Congress created a definition of HLW in §6(4) and gave NRC the authority to add various types of radioactive material to the Congressional definition of HLW. There is no rational interpretation of §6(4) that would allow NRC to remove any HLW material from the Congressional a finition of HLW. Any West Valley HLW must therefore remain HLW unless the West Valley Demonstration Project Act is changed.

The above argument is sufficient to show that West Valley HLW cannot be reclassified as "incidental" waste by either NRC or DOE. However, the following argument can also be made:

Even if it were possible to remove residual West Valley tank waste from the HLW category, the closed system of definitions in Section 6 of the West Valley Demonstration Project Act would require any such waste to be reclassified as a) low-level radioactive waste, b) transuranic waste, or c) byproduct material. The Act's closed system of waste definitions does not allow the creation of additional new waste categories such as "incidental." In the event that some of the HLW were reclassified as either low level radioactive waste or transuranic waste, the Act would require its disposal "in accordance with applicable licensing requirements." We understand the applicable licensing requirements for low-level radioactive waste to be either 10 CFR Part 61 or 6 NYCRR Part 382.

NEPA problems

When agencies make discretionary decisions, the National Environmental Policy Act (NEPA) requires the environmental effects of those decisions to be considered beforehand in a NEPA (EIS) process. The EIS must focus on issues, impacts, and alternatives that are directly relevant to the agency decision.

NRC mistakenly claims that "An EIS is not needed at this step of the process of prescribing the LTR because the Commission is not establishing a new requirement for the site." This is faulty logic. The West Valley Demonstration Project Act gave NRC full discretion to set West Valley decommissioning requirements. In choosing one set of requirements from the universe of possibilities, NRC made a decision that invokes NEPA. The decision is both new and novel; it requires an EIS.

NRC's decision is not trivial. It consists of the adoption of decommissioning standards, including maximum allowable radiation dose limits that must be met after the West Valley site is decommissioned. As part of this decision, NRC has chosen dose limits that 1) are based on the LTR but 2) may, under certain circumstances, exceed the dose limits allowed by

¹⁷ West Valley Demonstration Broject Act, section 3(a)(4).

^{18 67} FR 5012 (February 1, 2002).

the LTR. NRC's NEPA process must therefore focus on this decision to allow a range of acceptable radiation doses at West Valley. It must focus especially on how and why NRC would allow radiation doses that exceed the LTR limits.

NRC needs to meet these NEPA requirements but has never done so. NRC seems to think it can satisfy NEPA by being generally involved in, and by doing a detailed internal review of, the DOE-NYSERDA EIS process. ¹⁹ Such a review role is useful but not sufficient; it does not satisfy NRC's obligation to do a NEPA review (an EIS process) to support NRC's own decisionmaking.

NRC's confusion about its NEPA obligation is echoed in the recently issued "Regulator's Communication Plan." This NRC document refers to the DOE-NYSERDA EIS process and states that "NRC may adopt this EIS for determining that the preferred alternative [as chosen by DOE and NYSERDA] meets NRC's decommissioning criteria, assuming that NRC will find it acceptable" and that "If there are decommissioning issues that cannot be addressed through this EIS, these issues should be identified early in the NEPA process." We do not mean to be disrespectful but must emphasize that NRC is not paying attention. As we have indicated repeatedly, there are issues that cannot be addressed through this EIS, at least not without substantial effort and cognition by NRC. We refer particularly to NRC's adoption of West Valley decommissioning requirements. In addition, NRC's comment that such issues "should be identified early in the NEPA process" is disingenuous, given the fact that the

We do not mean to suggest that NRC's adoption of West Valley decommissioning requirements is totally unrelated to the DOE-NYSERDA selection of an alternative that meets these requirements. NEPA recognizes that two or more agencies may need to make decisions that are closely linked or interrelated, as is the case here. This type of decisionmaking relationship is called "functional interdependence" and is covered by a section of the NEPA regulations, 40 CFR 1501.5. However, NRC does not meet the requirements of 40 CFR 1501.5, especially §§1501(a) and (c).

NEPA has specific substantive requirements. These include requirements for scoping (i.e., the identification of relevant issues for an EIS process), identification of impacts, review of alternatives, etc. NRC has not met these requirements with respect to its West Valley decisionmaking (i.e., its adoption of West Valley decommissioning requirements). NRC joined the DOE-NYSERDA West Valley EIS in 1991 as a "cooperating agency" but has never carried out a scoping process or identified impacts or developed alternatives that are pertinent to its own West Valley decisionmaking. Doing these things "early in the process" would have been a good idea in 1991, but it was never done.

¹⁹ For example, see 67 FR 5004, 5007, and 5012 (February 1, 2002).

²⁰ U.S. Nuclear Regulatory Commission, "Regulators Communication Plan on Application of Cleanup Requirements for Decommissioning the West Valley Site," March 27, 2002, p. 3.
²¹ Ibid., p. 5.

NRC now "expects to participate as an EIS cooperating agency" in the second of two "descoped" EISs that DOE intends to create. 22 NRC's participation in this EIS may be problematic since 1) the EIS does not yet exist and 2) the Coalition on West Valley Nuclear Wastes considers DOE's "descoping" plan illegal.

DOE agreed, as part of the Stipulation of Compromise Settlement signed with the Coalition in 1987, that "the closure Environmental Impact Statement process – including the scoping process – shall begin no later than 1988 and that this process shall continue without undue delay and in an orderly fashion consistent with applicable law, the objectives of the West Valley Demonstration Project, available resources and mindful of the procedural processes (including public input) needed to complete the aforesaid Environmental Impact Statement." NRC did not sign the Stipulation but is aware of it (copies were sent to NRC immediately after it was signed). NRC made no objection to the Stipulation when NRC joined the West Valley closure EIS process as a "cooperating agency" in 1991. The Coalition therefore believes that NRC must abide by the terms of the Stipulation, including the section quoted above. For example, NRC has no right to participate in the West Valley EIS in a manner that is inconsistent with applicable law or contrary to the procedural processes needed to complete the EIS.

As already noted. NRC has failed to meet many of the standard procedural requirements of NEPA (scoping, identification of impacts, evaluation of alternatives, etc.). These requirements arise from NRC's discretionary decisionmaking at West Valley (i.e., NRC's prescription of decommissioning requirements), as already described. NRC's noncompliance with NEPA is unacceptable under NEPA's own rules and is also unacceptable in the context of the West Valley EIS process (and the Stipulation that governs it), yet NRC somehow continues to believe that its NEPA obligations can be satisfied by NRC's review role within the DOE-NYSERDA West Valley EIS process.²⁴ NRC is mistaken in this belief. The Coalition will not allow NRC to abuse the West Valley EIS process in this manner.

There are two relatively easy ways for NRC to avoid some or all of the above NEPA problems. One would be for NRC to adopt the LTR verbatim (without loopholes) as the decommissioning requirements for West Valley. The extensive NEPA process that NRC performed several years ago for the LTR would be sufficient, or essentially sufficient, to apply the LTR to West Valley. The other way for NRC to avoid some of the above NEPA problems would be for NRC to perform its own West Valley EIS. Such an EIS would need to focus on the proposed LTR loopholes (i.e., on West Valley decommissioning requirements that differ from the LTR, especially any radiation dose limits that would exceed the LTR limits). The NEPA requirements for a separate EIS would still be the same (scoping, evaluation of impacts, development of alternatives, etc.), but the advantage of a separate EIS would be that NRC could escape the procedural dilemma that it has created for itself within the DOE-NYSERDA EIS.

²⁴ For example, see 67 FR 5012 (February 1, 2002).

^{22 67} FR 5005 (February 1, 2002), footnote 8; also p. 5004.

²³ Stipulation of Compromise Settlement, May 27, 1987, §4.

The Coalition is willing to work cooperatively with NRC to resolve this procedural dilemma, i.e., to allow NRC to fulfill its NEPA obligations within the DOE-NYSERDA EIS process at West Valley. However, any resolution of this dilemma will also require cooperation and good-faith effort by NRC. The dilemma cannot be resolved if NRC continues to forge ahead without regard for NEPA and the Stipulation.

The dilemma is as follows: NRC has never initiated or completed a NEPA process to justify West Valley decommissioning requirements that go beyond (i.e., are less strict than) the LTR. NRC has never performed scoping or done any of the other required steps. The Coalition has urged NRC to do so, but NRC has not done so. If NRC were to change its mind and decide to abide by NEPA, it could perform scoping this year (2002) and continue with the other required NEPA steps. This would be acceptable if NRC were to perform its own EIS but is highly questionable if done within the DOE-NYSERDA EIS that is governed by the Stipulation. The Stipulation, as quoted above, requires that the "Environmental Impact Statement process - including the scoping process - shall begin no later than 1988..." Doing new scoping fourteen years later - in 2002 - does not meet the requirements of the Stipulation. A delay of a few years for a truly new, unforeseen issue might be justified, but that is not the case here. NRC's NEPA obligations are not new or unforeseen; the obligations arise directly from NEPA, and the Coalition has urged NRC for several years to fulfill these obligations. Thus, NRC cannot simply demand new scoping in 2002 (nor can DOE do so). The Coalition would reject such a demand as an unreasonable violation of §4 of the Stipulation ("begin no later than 1988", "continue without undue delay", "in an orderly fashion consistent with applicable law", "mindful of the procedural processes", etc.).

At the same time, the Coalition remains open to proposals (but not demands) from either NRC or DOE. The Coalition may be willing to consider new scoping, for example, if such madifications to the seignal Etipulation can be mutually agreed upon and carried out with adequate safeguards. Any such proposals, whether from NRC or DOE, will require negotiation among the affected parties (including at least DOE and the Coalition). No party has the right to modify or disobey the Stipulation unilaterally.

If NRC were to ask the Coalition for permission to perform new scoping within the DOE-NYSERDA EIS process, the Coalition would be open to such a request but would expect to negotiate its terms. The Coalition's primary interest in such negotiations would be to ensure that new scoping 1) has an adequate and proper scope for assessment of impacts associated with NRC's decisionmaking and 2) does not involve shortcuts that bypass or bias the NEPA process. In addition, where the NRC Policy Statement is contradictory or not in accordance with law, the Coalition would seek a clear, binding commitment from NRC that the more protective interpretation will apply and that no portion of the decommissioning requirements will be inconsistent with applicable law. The Coalition already recognizes several issues that would need to be negotiated for the above purposes. The following issues (and perhaps others) would need to be considered:

 Failure of institutional controls in relation to NRC's decision that "health and safety and cost-benefit considerations may justify the evaluation of alternatives that do not fully comply with the LTR criteria."²⁵ The LTR intended to set a "cap" on allowable radiation dose in the event of institutional control failure, based on the idea that failures of institutional controls were unlikely but could not be ruled out. ²⁶ NRC's West Valley decommissioning requirements would not set a definite "cap" but would defer the decision to a vaguely described future process that involves NRC, EPA, and the public.²⁷ This is a major divergence from the LTR.

- Engineered barriers in relation to institutional controls²⁸ and the relevance of erosion to both engineered barriers and institutional controls. It is well known that geomorphic, watershed-scale erosion is a significant threat to containment of wastes at West Valley.29 Maintenance of institutional controls at West Valley will necessarily require the type of "active institutional controls" and "ongoing active maintenance" to which the 10 CFR 61 Performance Objectives refer. Thus, in any analysis of the West Valley site, it would be disingenuous to assume that engineered barriers "are distinct and separate from institutional controls" inasmuch as erosion will inevitably breach or topple engineered barriers unless active institutional controls are maintained. The NRC Policy Statement makes this "distinct and separate" argument31 as if it were relevant to West Valley. NRC needs to recognize that these two concepts are historically interrelated (e.g., in the development of the LTR "cap" of 100 or 500 mrem/yr³²) and cannot be divorced from each other in any protective approach to West Valley decommissioning. Engineered barriers may remain effective for some period of time following loss of institutional controls33 but are not effective indefinitely.
- Exemptions, especially in relation to NRC's false claim that "DOE is acting as a surrogate for NYSERDA until the NYSERDA license is reinstated at the end of the WVDP"34 or that "DOE in essence is acting as a surrogate for NYSERDA."35
 - a) Exemptions are not part of the LTR per se. NYSERDA, upon resumption of the site license, could not obtain an exemption from the LTR under 10 CFR Part 20, Subpart N, inasmuch as Part 50 license termination requires compliance with "the criteria for decommissioning in 10 CFR part 20, subpart E."³⁶

^{25 67} FR 5004 (February 1, 2002).

^{26 62} FR 39070 (July 21, 1997).

²⁷ 67 FR 5005-5006 (February 1, 2002), response A.2.

^{28 67} FR 5007 (February 1, 2002), response B.6.

²⁹See, for example, the DOE-NYSERDA West Valley Draft EIS (1996); responses thereto by NRC and NRC's contractor, Center for Nuclear Waste Regulatory Analyses; and SECY-98-251, p. 5.

³⁰ See §61.42, §61.44, and the definition of "Active Maintenance" in §61.2.

^{31 67} FR 5007 (February 1, 2002), response B.6.

^{32 62} FR 39068 (July 21, 1997).

³³ See, for example, p. 6 of the NRC Task Plan (April 27, 1988) that governs West Valley waste which contains between 10 and 100 nCi/g of transuranic elements.

^{34 67} FR 5004 (February 1, 2002), footnote 4.

^{35 67} FR 5012 (February 1, 2002).

^{36 10} CFR 50.82.

- b) NRC's claim that DOE is acting as a "surrogate" licensee at West Valley is specious. We find no support for this idea in either the West Valley Demonstration Project Act or the NRC License Amendment that suspended the license. If NRC can make a compelling argument that DOE has not only the rights but also the *obligations* of a licensee at West Valley, then we may be willing to consider the idea. Our position otherwise is that DOE has neither the rights nor the obligations of a licensee at West Valley and therefore cannot apply for an exemption under 10 CFR 20, Subpart N. We note that NRC's formal "Statement of Policy" in the Federal Register notice³⁷ does not grant any explicit right of exemption to DOE, and we therefore deny that DOE has any such right.
- An exemption from the LTR "cap" of 100 or 500 mrem/yr would clearly invoke NEPA.
- Selection of critical group. According to NRC, "The 'Statement of Considerations' for the LTR notes that the critical group would be the group of individuals reasonably expected to be the most highly exposed, considering all reasonable potential future uses of the site, based on prudently conservative exposure assumptions and parameter values within modeling calculations."38 This is a reasonable approach and, to the extent that it matches 10 CFR 20.1003, is also the legally binding definition of "critical group." However, NRC seems willing to let the choice of the critical group be determined either by an existing NRC SRP document or by DOE and NYSERDA.³⁹ This may not be appropriate (and, in any case, cannot supersede the regulatory requirement to identify the group of individuals reasonably expected to be most highly exposed). As we have indicated previously, 40 those living downstream from the site (including the Seneca Nation of Indians, customers of Erie County Water Authority, residents of Buffalo, and others who live on the Great Lakes) need to be evaluated as critical group members. There is ample evidence that containment failures at the West Valley site (especially from erosion but also possibly from terrorist acts) will release large quantities of radionuclides into Buttermilk and Cattaraugus Creeks, Lake Erie, and other waters of the Great Lakes.
- 5. Combined dose. The NRC Policy Statement suggests that it may be permissible for the combined dose from the NRC-licensed and State-licensed portions of the West Valley site to exceed the LTR dose criterion and "cap." This is not correct. The LTR does not allow the combined dose (including the SDA) to exceed the dose criterion and "cap" values specified in Part 20, §§20.1402, 20.1403, and 20.1404. The LTR dose limits are consistently expressed in terms of "residual radioactivity," which by definition includes "radioactive materials remaining at the site as a result of

³⁷ Part V, under heading of "Final Policy Statement," 67 FR 5010-5012 (February 1, 2002).

^{38 67} FR 5006 (February 1, 2002), response B.2.

³⁹ Ibid

⁴⁰ For example, see comments submitted September 21, 1996, by R. Vaughan on the DOE-NYSERDA Draft EIS, comments 115-119.

^{41 67} FR 5008 (February 1, 2002), response E.2.

routine or accidental releases of radioactive material at the site and previous burials at the site..."

Thus, in assessing compliance with the LTR, the dose from the SDA must be combined with the dose from portions of the site under NRC jurisdiction. The only exclusion from "residual radioactivity" is background radiation.

6. Method of combining dose projections for competing modes of failure. Given the fact that engineered barriers and other essential containment features may have various possible modes of failure, some reasonable method (such as probabilistic risk assessment) is needed for weighting and combining the doses predicted for each possible mode of failure. It is not acceptable for the LTR to be met by choosing a single mode of failure that meets the dose limit while ignoring another plausible mode of failure that produces doses that are orders of magnitude above the dose limit.

These are some of the issues that need to be addressed. We invite you to contact us to set up discussion of these issues before engaging in NEPA scoping activities.

Sincerely,

Raymond C. Vaughan

cc: A. Williams, DOE

P. Piciulo, NYSERDA

T. Attridge, CTF

C. Schumer, Senate

II. Elinton, Denute

A. Houghton, House

T. Reynolds, House

J. Quinn, House

J. LaFalce, House

^{42 10} CFR 20.1003.

BUFF NEWS 4/17/08

WEST VALLEY

Panel raises concerns on cleanup

By KATHY KELLOGG

Cattaraugus Correspondent

WEST VALLEY — Larry Camper, the Nuclear Regulatory Commission's decommissioning branch chief, emphasized to the West Valley Citizens Task Force on Tuesday night that the commission's policy statement on decommissioning the nuclear waste site is final.

Camper spoke to the group about its concerns that the agency failed to do a job required by the 1980 West Valley Demonstration Project Act.

That law states the agency must set criteria for decommissioning the site. But the task force claims the policy creates new loopholes that could lead to higher radiation doses and perpetual licensing for the former fuel-reprocessing facility.

The task force invited the NRC and all other federal and state agencies involved in site activities to attend its meeting. The agencies will be meeting at 8 this morning to continue discussions on cleanup standards for regulators.

The NRC at 7 tonight will explain its policy statement, containing the cleanup criteria, during a public meeting beginning in the Ashford Office Complex on Route 219.

"There are a lot of assumptions. There's a good degree of speculation about what's going to happen down the road," said task force member Eric Wohlers, who also serves as the Cattaraugus County Environmental Health director.

Referring to the policy statement issued in January, he said the task force expected better definitions and guidelines on cleanup in case containment structures or site controls fail in the future.

Task force members, in inviting the agencies to the meeting, have raised concerns that the federal Department of Energy or the state Energy Research and Development Authority could receive exemptions in radiation-dose levels now spelled out in federal regulations.

They also have expressed concerns that the DOE could be dismissed from site activities in the future and that the research and Development Authority could be left holding a license to operate the site under fluctuating cleanup standards and with few resources.

Paul Merges of the state Department of Environmental Conservation told the group he has concerns about the policy's criteria for lowlevel radioactive waste and the possibility for exemptions on radiation dosages.

"I'm not sure whether I would change the document or reconsider the (West Valley Demonstration Project Act). Maybe there will be discussion about that later," said Merges, when asked how he would strengthen the policy.

Paul Giardina of the Environmental Protection Agency said the final yardstick will be how much radioactive contamination is left in the drinking water, soil and air pathways to the population. He challenged the group to take a new perspective.

James Liberman of NRC said the West Valley Demonstration Project Act was unclear about the criteria and reminded the group that the lisense may not be terminated if cleanup does not meet standards.

Susan Breckbill, director of the Department of Energy's Ohio field office, assured the group that decontamination is being accelerated, and her agency will continue to monitor its waste and fix what goes wrong.

She further urged the Energy and Research Development Authority to become more involved in finalizing an environmental impact statement that recommends a preferred closure alternative.

ect's shift in emphasis from vitrification to decontami-nation and decommission. Little said the job cuts are a function of the proj-

"The reduction in force is not related to ... what we're going to got or not get." Little said. "It's sumply based on what we see over the next few years."

called vitrification. bauorgraphing grithor lo the observe liquid subciparation of the same subciparation of the su reductions at the project, a joint state-federal eleanup effort that has pumped nearly 600,000 gallons of highly Little stressed that the layoffs aren't due to budget

The West Valley Demonstration Project will lay off 66 employees by the end of September, the project's privile prosesses of West Valley Muclear Services, and 51 of the workers are salarted employees working in a variety of administrative, engineering and clerical jobs at the project 35 miles outh of Bultalo. They will be gone by the end of May.

Little stressed that the layoffs aren't due to budget here.

News Stell Reporter

By JOHN F. BONYATTI

Nuclear eleanup contractor to lay off 66 employees

of the eleanup.

e-mail: jhonfath(irbuffnews.com

to be work for vitrification and ... in the decondami-nation and decommissioning," he said, "Now, all of a sudden, the company looks as if they're trying to make DOE happy and clean up only the hottest few areas."

"We were told from the start that there was going

some citizen watchdog groups allege, the federal gov-ernment seems to be planning a curback on the scope of the desemb

the layoffs aren't a surprise, he's disappointed that, as

several programs and refraining, Little said.

Their chief steward, Pete Cooney, said that while will be gone by September. The 15 hourty workers who will be fixed are repre-sented by the International Association of Machinian and Accompace Workers. The displaced workers, who

chance to continue their health care benefits under Workers will be offered severance packages, a

the company concluded that those earlier cuts in per-sonnel still left too many workers.

MEST VALLEY

Until now, the company has used buyouts, retirements and reassignments to other projects to out the work force. The layoffs announced Tuesday come after

bring WVNS employment at the site to just under 500, The vitrification part of the project will be complete by September, and West Valley Nuclear Services has been trimming jobs from its work force, which was at 16 as recently as last year. The new reductions will be the work to the control of the

as Congressional appropriators attempted to push atalied negotiations between the DOE and NYSER.

DA on an agreement for the site's future.

The footent Department of Energy, which has fund-ed 90 percent of the eleanup, and the Now York Finers gy Recessers and Development, have spent nearly \$2 provided the other 10 percent, have spent nearly \$2 but the federal contribution to the West Valley budget was cut \$17 million hast year, to \$91,6 million, as Constressional appropriators attended to nuch as Constressional appropriators attended to nuch

move forward."

Three years to determine what skills we needed to

"The project is changing." he said. "We've got to get a work force in place for the next phase, which is decontamination. We've been working over the last

REGULATORS COMMUNICATION PLAN ON APPLICATION OF CLEANUP REQUIREMENTS FOR DECOMMISSIONING THE WEST VALLEY SITE

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I SCOPE

On November 27, 2001, the US Environmental Protection Agency (EPA) Region 2, US Nuclear Regulatory Commission (NRC), New York State Department of Environmental Conservation (NYSDEC), and New York State Department of Health (NYSDOH) met to discuss applicable cleanup criteria and regulatory roles and responsibilities for the West Valley site. These agencies, together with New York State Department of Labor (NYSDOL), are herein referred to as the regulators. In this meeting, the regulators agreed to develop a communication plan that:

1) identifies applicable cleanup requirements and expectations that need to be addressed in decommissioning the West Valley site, and 2) describes the roles and responsibilities of involved regulatory agencies. While it may not represent consensus, compromise, or resolution of all differences between the regulatory agencies requirements or perspectives, the regulators intend to use this communication plan to foster a better understanding of cleanup requirements/expectations and roles/responsibilities related to decommissioning of the West Valley site. It is also intended to assist the scoping of issues that may need to be considered in the West Valley decommissioning Environmental Impact Statement (EIS) for the West Valley Development Project (WVDP).

II GOALS AND OBJECTIVES

- Identify applicable regulatory cleanup requirements and expectations.
- Identify roles and responsibilities of involved regulatory agencies.

III BACKGROUND

In October 2000, the regulators initiated a dialogue on the various cleanup standards that apply at West Valley. It was recognized that different Federal and State agencies have different cleanup standards that need to be addressed. The regulators agreed that it is a desirable goal to work together and present these requirements in a clear and coordinated way which will help facilitate planning and decision-making processes, eliminate redundancy, and make better use of resources.

A General Accounting Office (GAO) report on West Valley was made public on June 12, 2001. The report (GAO-01-314) includes several recommendations, one of these recommendations pertains to coordination among agencies on cleanup requirements. Specifically, GAO recommended that NRC and EPA, in coordination with New York State, agree on how their different regulatory cleanup criteria should apply to the site. On November 27, 2001, regulatory agencies met to discuss these and related issues on the decommissioning of the West Valley site. In this meeting, the regulators agreed to develop a communication plan that identifies

applicable cleanup requirements and expectations, and describes the roles and responsibilities of involved regulatory agencies.

IV PRINCIPAL POINTS OF AGREEMENT

Regulators agreed upon a number of general points, including:

- To work together in identifying cleanup criteria and expectations.
- To participate in a planned public meeting on NRC decommissioning criteria.
- To develop a communication plan that includes a description of roles and responsibilities
 of involved regulatory agencies, and a matrix of cleanup requirements and expectations.
- To address and resolve issues through the Decommissioning EIS.
- To consider respective roles as a cooperating agency for the decommissioning EIS.
- To address and resolve regulatory issues in a timely manner.
- To acknowledge that some waste may remain onsite.
- To acknowledge the possibility of partial site release and that some portion of the site may remain under license for the foreseeable future.
- To solicit stakeholder input on decommissioning and ability to meet site cleanup criteria.
- To agree in principle with creanup to NRC dose limit of 25 milent/yr with ALARA, for unrestricted release.

V REQUIREMENTS AND EXPECTATIONS

One objective of this plan is to identify the applicable cleanup requirements and expectations for decommissioning the West Valley site. Table 1 provides a matrix of requirements and expectations that all regulators endorse. Table 2 provides a matrix of requirements and expectations for individual regulators. Table 2 is intended to point out the various agencies clean-up standards and expectations resulting from the difference in the underlying statues from which each agency has been charged with cleanup responsibility. It is designed to serve as a listing of applicable cleanup requirements and expectations that need to be addressed from the perspective of the listing agency. Together, these tables consolidate information in an effort to promote a common understanding among stakeholders involved in the West Valley site decommissioning.

VI AGENCY ROLES AND RESPONSIBILITIES

NRC Role and Responsibility

NRC has the regulatory responsibility under the Atomic Energy Act for the Western New York Nuclear Service Center (WNYNSC) which is the subject of the NRC license issued to NYSERDA pursuant to 10 CFR part 50, with the exception of the State-Licensed Disposal Area (SDA). The license is currently in abeyance pending the completion of the WVDP.

The West Valley Demonstration Project Act (WVDPA) specifies certain responsibilities for NRC, including: 1) prescribing requirements for decontamination and decommissioning; 2) providing review and consultation to DOE on the project; and 3) monitoring the activities under the project for the purpose of assuring the public health and safety. In addition, NRC has agreed to provide support as a cooperating agency with US Department of Energy (DOE) and New York State

Energy Research and Development Authority (NYSERDA), under the National Environmental Policy Act (NEPA), on the West Valley Decommissioning EIS. NRC may adopt this EIS for determining that the preferred alternative meets NRC's decommissioning criteria, assuming that NRC will find it acceptable.

Notwithstanding the WVDP, NRC retains the regulatory responsibility for the non-DOE activity in the non-project area and non-SDA area to the extent Part 50 contamination exist both on and offsite. Following the completion of the WVDP and reinstatement of the license, NRC will have the regulatory responsibility for authorizing termination of the license, should NYSERDA seek license termination.

EPA Role and Responsibility

EPA agrees to be a cooperating agency with DOE and NYSERDA, under NEPA, on the West Valley desemmissioning EIS. ERA will review the cleanup plan: EIS and other decuments developed by DOE in conjunction with NYSERDA to provide early input so the remediated site will also meet the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) risk range to avoid the potential need to list the WVDP on the National Priority List (NPL). Currently, the WVDP is not an NPL listed site. EPA will inspect and review West Valley's radionuclide air emissions for compliance with 40 CFR61 limit of 10 mrem/yr. Since a number of EPA programs have been delegated to New York State agencies, EPA will provide consultation and oversight for State implementation of the delegated Clean Air Act (CAA), Clean Water Act (CWA), Safe Drinking Water Act (SDWA) and Resource Conservation and Recovery Act (RCRA) programs that are applicable to the West Valley site.

NYSDEC Role and Responsibility

Agreement State Authority

In 1962, pursuant to Section 274b. of the Atomic Energy Act of 1954, New York State entered into an agreement with the Atomic Energy Commission (AEC), the predecessor to the NRC, whereby the Commission discontinued certain of its regulatory authority over byproduct, source, and small quantities of special nuclear material within the State. The State and AEC also adopted a related Memorandum of Understanding in 1965 clarifying certain mutual obligations relating to the regulation of Commission licensed activities within the State. As a result, the regulation of radioactive materials, except as pertains to production and utilization facilities, and facilities under exclusive federal jurisdiction, generally falls within the State's responsibilities for protecting the public health and safety under its police powers. As part of these responsibilities, NYSDEC regulates environmental discharges and disposal of radioactive materials, and transportation of low level radioactive waste within the State for non-federal facilities. Thus, the NYSDEC regulates the State-Licensed Disposal Area (SDA) through issuance of permits under 6 NYCRR Part 380 Rules and Regulations for Prevention and Control of Environmental Pollution by Radioactive Materials, and the transportation of Low-Level Radioactive Waste (LLRW) under 6 NYCRR Part 381 Low-level Radioactive Waste Transporter Permit and Manifest System. (Please note that NRC relinquishes its regulatory authority to the State. This is fundamentally different than the delegation to the State approach used by the EPA.)

NYSDEC's role at the SDA is to ensure that the site owner/operator, NYSERDA, properly maintains the integrity of the SDA, minimizes discharges of radioactive materials to the environment, and properly closes the facility in a manner that is protective of the public health and environment and in compliance with Part 380. NYSDEC also has a broader mandate under the Environmental Conservation Law (ECL) § 3-301, 1. i., to protect the public health and environment from sources of radioactive materials contamination beyond the specific regulation of sites subject to Part 380 permitting.

RCRA - Hazardous Waste and Mixed Waste

In 1990, the NYSDEC received authorization from the EPA to regulate Federal Facilities which contain Hazardous and Mixed Waste pursuant to 6 NYCRR Part 370 Series. This includes permitting authition under letterin Otatus for BCBA regulated units and Corrective Action Requirements for investigation and if necessary, remediation of hazardous constituents from Solid Waste Management Units.

RCRA Permitting

NYSDEC's role is to ensure compliance with applicable permitting requirements for RCRA regulated units storing or treating hazardous or mixed waste. This includes closure and if necessary, post-closure care of these units.

RCRA Corrective Action

NYSDEC's role is to ensure compliance with the 1992 joint NYSDEC/USEPA 3008 (h) [New York State Environmental Conservation Law, Article 27, Titles 9 &13] Order issued to the USDOE and NYSERDA. The order required investigation of solid waste management units and to perform interim corrective measures, if necessary. A Corrective Measures Study (CMS), which evaluates selection of a remedial alternative(s) is required under the Order. NYSDEC has agreed to utilize the EIS process as a means to comply with the CMS requirements. NYSDEC's role is to ensure that the remedial option(s) and selection(s) under the EIS meet the requirements and standards for RCRA corrective action.

Protection of the Environment

NYSDEC is responsible for ensuring the protection of the State's environment under ECL and delegated federal responsibilities. This entails all aspects of the protection of natural resources, including the lands, streams, wetlands, groundwaters, mineral resources, and wildlife of the State not reserved by a federal agency.

In addition, NYSDEC program staff regularly consult with their counterparts in the NYSDOH to ensure that the DOH, in their role as lead agency for the protection of public health, is in concurrence with the remedial actions under review by the NYSDEC.

NYSDOH Role and Responsibility

As established in NYS Public Health Law, NYSDOH is the lead State agency for protection of public health from any public health threat, including ionizing radiation. However NYSDEC, under its responsibility as established in Environmental Conservation Law (ECL), will serve as the lead State agency for the decommissioning project. NYSDOH will ensure its responsibility for protection of public health via participation with NYSDEC staff in reviewing and concurring

with NYSDEC on any remedial actions. It is not expected that NYSDOH will routinely interact with DOE or NYSERDA. Additionally, NYSDOH regulates public water supply operators, including any that may be impacted by the site, to ensure compliance with the requirements of Part 5 of 10NYCRR.

NYSDOL Role and Responsibility

NYSDOL has issued regulations under Industrial Code Rule 38 (12 NYCRR 38) for the commercial and industrial use of radioactive materials, not subject to the regulatory powers and jurisdiction of the NYSDOH. Statutory authority for these regulations derives from Section 483 of the General Business Law, and Section 27 of the Labor Law. Pursuant to Industrial Code Rule 38, NYSDOL has issued radioactive materials license number 0382-1139, authorizing NYSERDA to possess and manage emplaced radioactive waste at the SDA. The license requires NYSERDA to conduct its operations in accordance with a radioactive safety program, reviewed and approved by the Department, to minimize radiation exposures to workers and the public resulting from SDA operations.

VII DECOMMISSIONING ISSUES

Significant issues exist that will need to be addressed in the West Valley Decommissioning EIS. The NEPA process will be used to address these issues, to the extent practical. Regulators have also agreed to consider working in the role of a cooperating agency to support the development of this EIS. The following issues are examples of the types of issues that will be addressed in the West Valley decommissioning EIS. If there are decommissioning issues that cannot be addressed through this EIS, these issues should be identified early in the NEPA process.

- NRC Licensed Disposal Area (NDA) This 5-acre disposal area was used from 1966 to 1986 and includes a variety of waste types, activities and packaging configurations. The NDA was used for the disposal of radioactive waste from fuel reprocessing and associated processing, such as decontamination and decommissioning. Wastes were placed in the NDA both during the NRC licensed commercial operation of the site by Nuclear Fuel Services and under the WVDPA during the initial cleanup of the former reprocessing facility by the DOE. The buried waste includes: reactor hardware (all components, including hulls), spent fuel from the Hanford Site's N-Reactor (which was not processed because of ruptured cladding), ion exchangers and sludges, filters, failed and discarded equipment, and contaminated soil. The decommissioning EIS may evaluate unrestricted and restricted release scenarios, the possibility that the NDA may remain under license for some period of time, and the extent of the DOE's responsibility for wastes which they placed there.
- State Licensed Disposal Area (SDA) This 16-acre commercial disposal area was operated from 1963 to 1975. It received radioactive wastes from various government, commercial, medical, and academic facilities, including the reprocessing operations at West Valley. Since the type of disposal operation that took place at the SDA falls under Agreement State authority, it is licensed by the NYSDOL and permitted by the NYSDEC. Thus the NRC does not have regulatory authority to set decommissioning criteria for the

SDA. This responsibility is held by the NYSDEC and the NYSDOL. However, since the cleanup activities at the site are subject to both NEPA and SEQRA, the decommissioning EIS will include consideration of closure of the SDA in order for NYSERDA to fulfill its SEQRA obligations.

- High-Level Waste (HLW) Tanks There are four underground tanks that were used for storing and processing over 600,000 gallons of liquid HLW generated during the reprocessing era. This liquid waste has been solidified via a vitrification process. Total Cs-137/Sr-90 radioactivity vitrified is approximately 11.7 million Curies. DOE expects to complete the vitrification of liquid HLW by 2003. Removal of HLW heels in these tanks is proceeding slowly. DOE is presently examining concentrations of residual contamination in these tanks. Regulators have stressed the need to remediate residual contamination associated with these tanks, to the extent practical, due to long term risk to public health posed by this contamination. The decommissioning EIS will evaluate options for decommissioning and closing these tanks in-place, or removing these tanks. The impacts of identifying the waste in the tanks as incidental to reprocessing, and not HLW, should be considered in the decommissioning EIS.
- Groundwater Plume Radioactively contaminated groundwater, which emanated from the reprocessing building and migrated on-site, has probably existed since the late 1960s to early 1970s, but was not identified or characterized until the mid 1990s. Under the building, the plume consists of several isotopes, but beyond the building footprint it consists only of the isotope Strontium-90. The plume now covers an area that is approximately 300 feet by 900 feet. Groundwater in the main flow path of this plume is being pumped and treated, and a below-grade permeable wall intended to prevent further migration is being tested on an arm of this plume. The decommissioning EIS will evaluate options to remediate or monitor this plume.
- Partial Site Release Partial site release, in the context of West Vailey, refers to the situation where a portion of the site is released for unrestricted use, while other portions of the site's use may remain restricted or under license. Regulators acknowledge the reality of partial site release and that some portion of the site may remain under license for some period of time. The decommissioning EIS should evaluate the scenario of partial site release.

VIII AUDIENCE

This plan will help regulators communicate with both internal and external audiences. Internal audiences refer to the regulators with their respective management and staff. External audiences may include the following stakeholders and interest groups:

- DOE
- NYSERDA
- West Valley Citizen Task Force
- Seneca Indian Nation
- General public which include residents living near the West Valley site
- Environmental Organizations
- Community, professional, civic and public interest groups

- Business organizations and Chambers of Commerce Congressional representatives and their staff Media representatives Other Federal, State and Local Governments

- Canada

IΧ ACRONYMS

Atomic Energy Commission AEC

As Low as Reasonably Achievable ALARA

Clean Air Act CAA

Comprehensive Environmental Response Compensation and Liability Act CERCLA

Corrective Measures Study CMS

Clean Water Act CWA

Derived Concentration Guideline Limits DCGLs

US Department of Energy DOE

Environmental Conservation Law ECL Environmental Impact Statement EIS US Environmental Protection Agency EPA Federal Facilities Compliance Act **FFCA** US General Accounting Office GAO

Health Effects Assessment Summary Tables HEAST

High-Level Waste HLW

Integrated Risk Information System IRIS Low-Level Radioactive Waste LLRW License Termination Rule LTR

Multi-Agency Radiation Survey and Site Investigation Manual MARSSIM

Maximum Contaminant Level MCL NRC-Licensed Disposal Area NDA National Environmental Policy Act NEPA

National Emission Standards for Hazardous Air Pollutants NESHAP

National Priority List NPL

US Nuclear Regulatory Commission NRC New York Code of Rules and Regulations NYCRR

New York State Department of Environmental Conservation NYSDEC

New York State Department of Health NYSBSH New York State Department of Labor NYSDOL

New York State Energy Research and Development Authority NYSERDA

Resource Conservation and Recovery Act RCRA

State-Licensed Disposal Area SDA Safe Drinking Water Act SDWA

State Environmental Quality Review Act SEQRA State Pollutant Discharge Elimination System SPDES

Solid Waste Management Units SWMUs

Technical Administrative Guidance Memorandum TAGM

Western New York Nuclear Service Center WNYNSC

West Valley Demonstration Project WVDP West Valley Demonstration Project Act WVDPA

TABLE 1 REGULATORY MATRIX
All Agencies Agreement on Requirement/Expectation

- Agres	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
Requirement/Expectation Agency		┼			
LAGENCIES		-			
All actions and final status eithere to the ALARA principle.	*	<u> </u>	•		-
Agree in principle with cleanup to NRC dose limit of 25 mrembyr for unrestricted release ¹ .	•				
Acknowledge different portions of site may be released for unrestricted use, restricted use with institutional controls, and portions likely to remain under loomse.	•			<u> </u>	
DOE Ets should identify and satisfactorily address applicable cleanup guidance for all relevant regulatory agencies; the professed alternative needs to meet the applicable regulatory requirements for the WVDP.	-	-			ļ ,
Identify DCGL for unrestricted and/or restricted release scenarios.	•				1
Follow Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) guidance, or some other statistically valid and technically defensible approach, for the demonstration of compliance during the final status survey.	•		<u> </u>	<u> </u>	
Solicit stakeholder input on decommissioning and ability to meet site cleanup criteria.	•		<u> </u>	<u></u>	

Individual Agency Requirement/Expectation

- Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
Update intra reducing in the second in the s		1		_	
ENVIRONMENTAL PROTECTION AGENCY (EPA)			 		
Cleanup, for unrestricted release, to DCGLs developed consistent with NRC guidance to meet 10 CFR 20 Subpart E will meet CERCLA ² risk range.	×				<u> </u>
Cleanup, for restricted release with restrictions in place, to DCGLs developed consistent with NRC guidance to meet 10 CFR 20 Subpart E will likely meet CERCLA ² risk range.	×				
SDWA applies, and where applicable, must be met. State has primacy for determining compliance with SDWA.	+		<u> </u>	×	1
40 CFR81 (rad-NESHAP) applies and must be met.	X		•	-	
RCRA applies, and State has primacy for determining compliance with RCRA.			×		<u> </u>
				 	
IS NUCLEAR REGULATORY COMMISSION (NRC)					
Preferred atternative for West Valley Decommissioning EIS will meet NRC decommissioning criteria for West Valley.		×			

Individual Agency Requirement/Expectation

Requirement/Expectation Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
NRC's LTR is the criteria for the WVDP, reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is compliance with the requirements of the LTR. The criteria of the LTR shall apply to decommissioning of HLW tanks and other facilities in which HLW was stored; facilities used in solidification of waste; and any material and hardware used in connection with the WVDP.		x			,
The following criteria should be applied to incidental waste determinations: (1) the waste should be processed (or should be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical; and (2) the waste should be managed so that safety requirements comparable to the performance objectives in 10 CFR Part 81 subpart C, are satisfied.		×			,
Calculated dose for incidental waste to be integrated with all other doses from remaining material at the NRC-licensed site.		×			/
Allow consideration of long-term or perpetual license or other approaches for parts of the site where deanup to LTR is prohibitively expensive or technically impractical.		×			
LTR is decommissioning criteria for NDA.		х			1

Individual Agency Requirement/Expectation

Requirement/Expectation Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
The decommissioning EIS will consider analysis of impacts beyond 1000 years.		х			′
Coordinated approach with State in applying LTR criteria to NDA and SDA.		×			′
LTR applies to termination of NRC license after the license is reactivated. NRC's intent is that any exemptions or alternative criteria authorized to meet provisions of WVDPA will also apply to termination of NRC license.		x			
Site-specific analysis of impacts and costs in deciding on whether or not to exhume previous burials.		X (NDA)	(SDA)		1
Allow consideration of exemptions for unique past burisls on case-by-case basis.		X (NDA)	(SDA)		
	l		J	<u> </u>	

Individual Agency Requirement/Expectation

Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS		
Requirement/Expectation			 				
EW YORK STATE DEPARTMENT OF HEALTH (DOH)			 				
State regulates public drinking water supplies and sets Maximum Contaminant Levels (MCLs) for man-made beta and gamma emitters based on a 4 mremlyr dose limit. Limit applies to community water systems, including any that might utilize waters from West Valley site.	•		·	×			
	L						
EW YORK STATE DEPARTMENT OF ENVIRONMENTAL ONSERVATION (NYSDEC)					↓		
Radiological					 		
Groundwater and surface water standards are based on State drinking water standards and includes Sr-80 and H-3 concentrations and a 4 mrem/yr dose limit. NYSDEC considers that best usage for all Class GA (fresh) groundwater is as source of potable drinking water (Part 701.15).			×				

THOUT O DECIN ATORY WATRIX

Individual Agency Requirement/Expectation

Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
Requirement/Expectation TAGM-4003 Soil cleanup guidance of 10 mRemiyear should be considered. Differences in modeling approaches generally make NYSDEC's 10 mRemiyear equivalent to NRC's 25 mRemiyear plus ALARA.			×		
Part 380			 	<u> </u>	
SDA must remain in compliance with 6 NYCRR Part 380.			x		
Parts 382 and 383			-		
Any closure alternative for the SDA must make every reasonable affor to meet the Performance Objectives of 6 NYCRR Part 382.			×		
Any option requiring a new LLRW disposal facility, or expansion of an existing facility, would have to comply with the performance and dose objectives of Parts 382 and 383.			×		<u> </u>
NYSDEC expects that concentration averaging for the high- level radioactive waste tanks will conform to Part 382.80 (n)(2).			×		
Any residual waste left in place would fall under Agreement State authority.			×	<u> </u>	

Individual Agency Requirement/Expectation

Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
Any LLRW facility considered for siting under the ECL, Title 3 Section 29, can not be considered for placement at West Valley.			х		
RCRA		ļ	 -		
Operation, storage, closure and post-closure of RCRA Regulated Units must comply with all applicable NYCRR Part 370 series regulations.	٠		×		
3008(h) RCRA Consent Order					

Individual Agency Requirement/Expectation

Requirement/Expectation Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
- A CMS, remedial activities and long-term monitoring and maintenance of Solid Weste Management Units (SWMUe) must comply with the Order and utilization of appropriate NYSDEC Technical Administration Guidance Memorandums, including TAGM-4046, "Contained-In" TAGM-3028, and other such pertinent documents including, but not limited to the NYS Groundwater standards 6 NYCRR Part 703, ASTM Rick-Based Corrective Action, USEPA Rick Assessment Guidance for Superfund utilizing the Integrated Risk Information System (RUS) and Health Effects Assessment Summary Tables (HEAST), etc.	x		х	•	,
 Interim Measures may be required if EPAINYSDEC determines that they are necessary under the terms of the Order. 	x		×		<u> </u>
 A public participation program shall include the RCRA components to be addressed in the EIS (CMS). 	x		×	<u> </u>	
Faderal Facilities Compliance Act (FFCA)					
 Maintain compliance with the FFCA requirements during closure activities. 	•		×		1

Individual Agency Requirement/Expectation

Requirement/Expectation Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
CWA					
All actions at the site are subject to State Pollutant Discharge Elimination System (SPDES) requirements under 6 NYCRR Part 750 - 758.	•		×		
Surface and Groundwater Standards 6 NYCRR Part 700- 705.	+		X		
Cleanup complies with NYSDEC 208 planning objectives.			х		
Cleanup meets requirements for 401 certification under CWA			×		
OTHER					ļ
Air discharges subject to the CAA, including Title V.	+		X		<u> </u>
Endangered species laws under 5 NYCRR Part 162 must be complied with.			×		
Cleanup activities that would leave solid waste on the site must comply with 6 NYCRR Part 360.			×		
Cleanup meets NYSDEC requirements for closure of abandoned oil and gas wells under 6 NYCRR Part 555.			×		

Individual Agency Requirement/Expectation

Requirement/Expectation Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
Cleanup meets ECL Article 15 stream protection requirements.			×		. 1
Cleanup complies with Storage Tank closure requirements under 6 NYCRR Part 513.	+		x		1
Federal and State wetlands protection requirements (33 CFR Part 320 and 6 NYCRR Parts 606 and 563) must be met.	•		×		
Use of WNYNSC soils for caps and erosion controls on the WVDP have to comply with Mined lands regulations in 6 NYCRR Parts 420 - 425.			×		

^{1.} Assumes issues (such as, modeling methods and assumptions) related to application of this dose limit are resolved.

^{2.}DOE Decommissioning EIS must demonstrate that DCGLs based on 10 CFR 20 Subpart E dose limits meet CERCLA risk range consistent with EPA Risk Assessment Guidence for Superfund.

North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicły available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Puttin Clactronic Reading Room on the meering at the NRC Web site, http://www.nrc.gov/reading-rm/ adams/html. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 28th day of January 2002.

For the Nuclear Regulatory Commission. Christopher Gratton,

Sr. Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02-2498 Filed 1-31-02; 8:45 am] BILLING CODE 7590-

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-327-OLA, 50-328-OLA, & 50-390-OLA; ASLBP No. 02-796-01-OLA]

Tennessee Valley Authority; Sequoyah nits 1 & 2; Watts Bar Nuclear Plant, Unit 1; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 FR 2f 740 (1072), and sections 2.105, 2.700, 2.702, 2.772, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Tennessee Valley Authority, Sequoyah Nuclear Plant, Units 1 & 2, Watts Bar Nuclear Piant, Unit 1.

This Board is being established pursuant to two notices of consideration of issuance of operating license amendment, proposed no significant hazards consideration determination, and opportunity for a hearing published in the Federal Register (66 FR 65,000 and 65,005 (Dec. 17, 200) proceeding involves petitions for intervention submitted Jazzes 2002, by We the People, Inc., Tennessee, (WPIT) and the Blue Ridge Environmental Defense League (BREDL), respectively, challenging requests by the Tennessee Valley Authority (TVA) to amend the operating licenses for the Sequoyah Nuclear Plant, Units 1 and 2, and the Watts Bar

Nuclear Plant, Unit 1.1 The amendments would change facility technical specifications to allow the plants to provide incore irradiation services for the United States Department of Energy for the production of tritium for national

defense purposes. The Board is comprised of the following administrative judges: Thomas S. Moore, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

Dr. Thomas S. Elleman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.701.

Issued at Rockville. Maryland, this 28th day of January 2002.

G. Paul Bollwerk, III.

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 02-2500 Filed 1-31-02; 8:45 am] BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Decommissioning Criteria for the West Valley Demonstration Project (M-32) at the West Valley Site; Final Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Final policy statement.

SUMMARY: On December 3, 1999 (64 FR 67952), the Commission issued, for public comment, a draft policy statement that would approve the application of the U.S. Nuclear Regulatory Commission's (NRC's) License Termination Rule (LTR), as the decommissioning criteria for the West Valley Demonstration Project (WVDP) at the West Valley site. It also held a public meeting, on January 5, 2000, to

solicit public comment on the draft. This final policy statement was developed after considering public comments on the draft, and continues to apply the LTR as the criteria for the WVDP at the West Valley site.

EFFECTIVE DATE: February 1, 2002.

FOR FURTHER INFORMATION, CONTACT: Chad Glenn, Office of Nuclear Material Safety and Safeguards, Mail Stop T-8F37, U.S. Nuclear Regulatory Commission, Washington, DC 20555-

SUPPLEMENTARY INFORMATION:

- I. Introduction
- H. Background (Draft Policy Statement)
- III. Overview of Public Comments
- IV. Summary of Public Comments and Responses to Comments
 - A. Comments on the LTR
 - B. Comments on LTR guidance
- Comments on implementing the LTR
- D. Comments on NRC's process for prescribing the decommissioning criteria E. Comments on jurisdictional aspects of
- prescribing the decommissioning criteria
- Comments on the use of incidental waste criteria at the West Valley site
- G. Comments related to how the site should be decommissioned
- H. Comments on the wording of the draft policy statement Other comments
- V. Final Policy Statement

I. Introduction

This final policy statement is being issued under the authority of the WVDP Act, to prescribe decommissioning criteria for the WVDP.

II. Background (Draft Policy Statement)

From 1966 to 1972, under an Atomic Energy Commission (AEC) license, Nuclear Fuel Services (NFS) reprocessed 640 metric tons of spent fuel at its West Valley, New York, facility--the only commercial spent fuel reprocessing plant in the U.S. The facility shut down, in 1972, for modifications to increase its seismic stability and to expand its capacity. In 1976, without restarting the operation, NFS withdrew from the reprocessing business and returned control of the facilities to the site owner, the New York State Energy Research and Development Authority (NYSERDA). The reprocessing activities resulted in about 2.3 million liters (600,000 gallons) of liquid high-level waste (HLW) stored below ground in tanks, other radioactive wastes, and residual radioactive contamination.

The West Valley site was licensed by AEC, and then NRC, until 1981, when the license was suspended to execute

Although the TVA license amendment requests that are the subject of the WPIT and BREDL hearing requests that triggered this Licensing Board constitution notice were submitted separately, involve different facilities, and were the subject of separate hearing opportunity notices, both amendments are challenged by each of the petitioners. Under the circumstances, one Licensing Board is being established to consider both contested TVA applications in a consolidated proceeding. Any objection to this consolidation by any of the participants to the proceeding should be raised with the Licensing Board promptly.

the 1980 WVDP Act, Pub. L. 96-368.1 The WVDP Act authorized the U.S. Department of Energy (DOE), in cooperation with NYSERDA, the owner of the site and the holder of the suspended NRC license, to: (1) Carry out a liquid-HLW management demonstration project; (2) solidify, transport, and dispose of the HLW that exists at the site; (3) dispose of low-level waste (LLW) and transuranic waste produced by the WVDP, in accordance with applicable licensing requirements: and (4) decontaminate and decommission facilities used for the WVDP, in accordance with requirements prescribed by NRC. NYSERDA is responsible for all site facilities and areas outside the scope of the WVDP Act. Although NRC suspended the license covering the site until completion of the WVDP, NRC has certain authorities, under the WVDP Act, that include prescribing decommissioning criteria for the tanks and other facilities in which the HLW solidified under the project was stored, the facilities used in the solidification of the waste, and any material and hardware used in connection with the WVDP. It should also be noted that DOE is not an NRC licensee and DOE's decommissioning activities for the WVDP at the West Valley site are conducted under the WVDP Act and not the Atomic Energy Act (AEA).

The WVDP is currently removing HLW from underground tanks at the site, vitrifying it, and storing it onsite for eventual offsite disposal in a Federal repository. The vitrification operations are nearing completion. In addition to the vitrified HLW, the WVDP operations have also produced LLW and transuranic waste which, under the Act, must be disposed of in accordance with applicable licensing requirements. Besides the HLW at the site, the spent fuel reprocessing and waste disposal operations resulted in a full range of buried radioactive wastes and structural and environmental contamination at the site.

In 1989, DOE and NYSERDA began to develop a joint Environmental Impact Statement (EIS) for project completion and site closure, and to evaluate waste disposal and decommissioning alternatives. Because the WVDP Act authorizes NRC to prescribe decommissioning criteria for the project, NRC and DOE agreed on NRC's participation as a cooperating agency on the EIS, with DOE and NYSERDA, to aid

NRC in its decision on decommissioning criteria. The draft EIS was published in 1996. Subsequently, DOE decided to descope this EIS into two separate EISs to address: (1) Nearterm decontamination and waste management at the WVDP; and (2) decommissioning, long-term monitoring, and stewardship of the site.2 The NRC will not be a Cooperating Agency on the decontamination and waste management EIS because the Commission is not prescribing criteria for decontamination activities considered in this EIS. The NRC will be a Cooperating Agency on the EIS for decommissioning under the WVDP Act. The WVDP Act does not address license termination of the NRC license for the site, or portions thereof. Any such license termination will be conducted (if license termination is possible and pursued) under the Atomic Energy Act (AEA) of 1954, as amended. If NYSERDA pursues either full or partial license termination of the NRC license. NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination

After public review of the draft EIS, the WVDP convened the West Valley Citizen Task Force (CTF), in early 1997, to obtain stakeholder input on the EIS. The CTF recommendations for the preferred alternative in the EIS were completed in July 1998. In the latter half of 1997 (during the period that the CTF was working on its recommendations), NRC's LTR was published (62 FR 39058; July 21, 1997).

The Commission published a draft policy statement on decommissioning criteria for the WVDP at the West Valley site, for public comment, and a notice of a public meeting in the Federal Register on December 3, 1999 (64 FR 67952). The public meeting, to solicit public comment on the draft, was held

on January 5, 2000. As a result of that meeting, the Commission extended the comment period to April 1, 2000. This final policy statement was developed after considering the public comments on the draft. This final policy statement recognizes that a approach to decommissioning is needed both to ensure that public health and safety and the environment are protected and to define a practical resolution to the challenges that are presented by the site. In that regard, the Commission has decided to prescribe the LTR criteria for the WVDP at the West Valley site. reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is compliance with the requirements of the LTR. However, the Commission recognizes that health and safety and cost-benefit considerations may justify the evaluation of alternatives that do not fully comply with the LTR criteria. For example, the Commission would consider an allowing higher limits for doses on a failure of institutional control if it can be rigorously demonstrated that protection of the public health and safety for future generations could be reasonably assured through more robust engineered barriers and/or increased long-term monitoring and maintenance. The Commission is prepared to provide to assure cleanup to the maximum extent technically and economically feasible.

It should be noted that the subpart E of 10 CFR part 20 (LTR) does contain provisions for alternate criteria and subpart N of 10 CFR part 20 contains nmyisings for notential 4 with both alternatives based on a sitespecific analysis which demonstrates that public health and safety will be adequately protected with reasonable assurance. If the NRC license cannot be terminated in a manner which provides reasonable assurance of adequate protection of the public health and safety, then the appropriate Commission action may be to require a long term or even a perpetual license for an appropriate portion of the site until, if and when possible, an acceptable alternative is developed to permit actual license termination.5

^{&#}x27;The State of New York licenses a low-level waste disposal area at the West Velley site. Unless otherwise indicated, the terms "West Valley site" or "site" used in this Policy Statement refers to the NRC-licensed portions of the site.

²⁶⁶ FR 16447 (March 26, 2001).

³ Before issuing the draft policy statement for comment, the NRC staff proposed decommissioning criteria for West Valley to the Commission in a Commission Paper entitled "Decommissioning Criteria for West Valley," dated October 30, 1996 (SECY-98-251). On January 12, 1999, the Commission held a public meeting, on SECY-98-251, to obtain input from interested parties. Based on the results from this meeting, the Commission issued a Staff Requirements Memorandum (SRM). on January 26, 1999, requesting additional information on the staff's proposed decommissioning criteria for West Valley. In response to the January 26, 1999, SRM, the staff provided SECY-99-057, to the Commission, entitled "Supplement to SECY-98-251 'Decommissioning Criteria for West Valley.' Based on the contents of SECY-98-251, SECY-99-057. and written and oral comments from interested parties, the Commission issued an SRM on June 3, 1999, detailing its decisions on the decommissioning criteria for West Valley.

⁴ to NRC regulations can be issued to NRC licensees if the Commission determines that the is authorized by law and would not result in undue hazard to life or property.

NYSERDA is the licensee for the West Valley site and DOE is acting as a surrogate for NYSERDA until the NYSERDA license is reinstated at the end of the WVDP.

⁵ If a long term or perpetual license is necessary for any portion of the site, it is the Commission's intent that that portion of the site will be decontaminated in the interim to the extent technically and/or economically feasible. In

Based on the public comments received, the Commission has revisited the issue of "incidental waste" at West Valley. The Commission has decided to issue incidental waste criteria to clarify the status of and classify any residual wastes present after cleaning of the high-level radioactive waste (HLW) tanks at West Valley. Previously, the NRC has provided advice to DOE concerning DOE's classification of certain waste as incidental waste for clean-up of HLW storage tanks at both Hanford and Savannah River. As noted above, NRC intends to apply the LTR decommissioning criteria as the decommissioning goal for the entire NRC-licensed portion of the site. The Commission has decided that the most recent advice provided to DOE for the classification of incidental waste at Savannah River, with some additional modifications, provides the appropriate criteria which should be applied to West Valley. Specifically, the Commission is now providing the following criteria for classification of the incidental waste (which will not be deemed to be HLW) at West Valley:

- The waste should be processed (or should be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical; and
- (2) The waste should be managed, so that safety requirements comparable 6 to the performance objectives in 10 CFR part 61 subpart C, are satisfied.

Consistent with the overall approach in applying the LTR to the WVDP and to the entire NRC-licensed site following conclusion of the WVDP, the resulting calculated dose from the incidental waste is to be integrated with all the other calculated doses from the residual radioactive material at the NRC-licensed site to ensure that the LTR criteria are met. This is appropriate because the Commission does not intend to establish

separate dose standards for various sections of the NRC-licensed site.?

III. Overview of Public Comments

Twenty-eight organizations and individuals submitted written comments on the draft policy statement. Comments also were provided at the public meeting held on January 5, 2000. The commenters represented a variety of interests. Comments were received from Federal and State agencies, citizen and environmental groups, a native American organization, and individuals. The commenters offered over 200 specific comments and represented a diversity of views. The commenters addressed a wide range of issues concerning the decommissioning and closure of the WVDP and West Valley site. The reaction to the draft policy statement was generally supportive. However, viewpoints were expressed on the LTR and LTR guidance and how both should be applied at West Valley. In addition, there were comments on NRC's process for prescribing the decommissioning criteria and other issues specific to West Valley.

IV. Summary of Public Comments and Responses to Comments

The following sections A through I represent major subject areas and describe the principal public comments received on the draft policy statement (organized according to the major subject areas) and present NRC responses to those comments.

(A) Comments on the LTR (restricted release; institut reasonably achievable (ALARA); financial assurance; alternate criteria; ulations);

(B) Comments on LTR guidance (critical group, engineered barriers, cost/ benefit analysis);

(C) Comments on implementing the LTR (continued Federal or State onsite presence, perpetual license);

(D) Comments on NRC's process for prescribing the decommissioning criteria (when to prescribe the criteria; use of the LTR "Generic Environmental Impact Statement" (GEIS) to support the use of the LTR at West Valley; NRC's National Environmental Policy Act (NEPA) obligation for prescribing the West Valley decommissioning criteria);

-4 ctional (E) Comments ' prescribing the decommissioning criteria;

(F) Comments on the use of incidental waste criteria at West Valley;

(G) Comments related to how the site should be decommissioned disposition, consideration of pathways for dose, and contaminant transport);

(H) Comments on the wording of the draft policy statemen " word word "prescribe," paraphrasing the LTR and other statements on West Valley); and, r comments (implications of

the policy statement regarding native Americans, transuranic waste issue).

The comments received from the public in writing during the comment period and verbally during the January 5, 2000, public meeting have been factored into the Commission's decision-making on this final policy statement.

A. Comments on the LTR

The draft policy statement presented NRC's LTR as the decommissioning criteria for the WVDP and the West Valley site. Although there was general support for the use of the LTR as the decommissioning criteria for both the WVDP and West Valley site, there were a number of comments on the LTR. Specifically:

A.1 Comment. A number of commenters were concerned that the use of the LTR's restricted release concept, which includes the use of institutional controls, to decommission West Valley may not be appropriate because of the magnitude of the waste currently on-site and the potential for this waste to provide an unacceptable dose to members of the public if controls fail.

A. 2 Response. The LTR criteria consider doses to members of the public from the loss of institutional controls. The loss of institutional controls will need to be considered in the DOE/ NYSERDA EIS.⁶ Absent an from the LTR provision in 10 CFR part 20, a site, or part thereof, that cannot meet the restricted release provisions of the LTR, must remain under an NRC license. The Commission will consider

addition, if a long-term or perpetual license is determined to be appropriate, the NRC takes no position on which entity should be the long-term licensee as that decision, as well as decisions regarding long term financial contributions, should be made pursuant to negotiations involving DOE, New York, and possibly the U.S. Congress. Also. under the WVDP Act, the NRC is only addressing the public health and safety aspects of decommissioning selected portions of the site. Other potential issues between DOE and NYSERDA concerning the West Valley Site are not within NRC's authority to resolve.

The dose methodology used in 10 CFR part 61 subpart C is different from that used in the newer 10 CFR part 20 subpart E. However, the resulting allowable doses are comparable and NRC expects DOE to use the newer methodology in 10 CFR part 20 subpart E. Part 61 is based on International Commission on Radiological Protection Publication 2 (ICRP 2) and part 20 is based on ICRP 26.

⁷ Applying the LTR, the total annual dose to an e member of the critical group for the site, including the resulting does from the incidental waste, should be less than or equal to 25 mrem/yr TEDE. The Commission is not establishing a separate dose standard for the incidental waste such that the average member of the critical group potentially receive a dose of 25 mrem/yr TEDE from the rest of the NRC-licensed site and 25 mrem/yr TEDE from the incidental waste.

^{*}DOE has decided to descope the draft 1996 EIS into two separate EISs. DOE will be the lead agency on the EIS that will address WVDP facility decontamination and management of waste currently stored at the site. NRC expects to be kept informed of progress as required under the DOE/ NRC Memorandum of Understanding (MOU). DOE and NYSERDA will be the lead agencies on the EIS that will address decommissioning. NRC expects to participate as an EIS cooperating agency. Hereafter, this second EIS where NRC will be a cooperating agency will either be referred to as the decommissioning EIS or the DOE/NYSERDA EIS. unless otherwise noted.

granting an _______ to the LTR
criteria if it determines the ______ is
authorized by law and would not result
in undue hazard to life or property. The
Commission intends to involve the
public in the processing of any

request consistent with the "public perticipation" provision in 10 CFR 20.1405, and will involve the Environmental Protection Agency (EPA) if the request involves criteria greater than the dose criteria of 10 CFR 20.1402, 20.1403(b), or 20.1403(d)(1)(i)(A). Such an request will also require the approval of the Commission consistent with 10 CFR 20.1404(b).

A. 3 Comment. Some commenters also were concerned about the adequacy of the LTR's financial assurance requirements for maintaining institutional controls for restricted release at West Valley, especially if the financial assurance relies on future Government appropriations that are not

guaranteed.

A. 4 Response. In general, it is assumed that when a Government agency certifies that it will seek appropriations, to maintain institutional controls for the purposes of protecting public health and safety, the appropriations will be authorized. The Commission believes that it is reasonable to expect Federal and State agencies to meet their commitments to obtain funding for institutional controls to provide for the protection of the public health and safety.

A. 5 Comment. A number of commenters were also concerned that the time line specified for dose calculations in the LTR (1000 years) is too short for difficult sites like West

Valley.

A. 6 Response. In the development of the LTR, the Commission considered comments seeking a time period for dose analysis longer than 1000 years. Section F.7 in the LTR "Statement of

""""tions," 62 FR 39058 (July 21, Tuezo, The Commission concluded that for the types of facilities and source terms considered, it was reasonable to use a 1000-year period. However, the West Valley site presents some unique challenges in that significant quantities of mobile, long-lived radionuclides are present on site. Because under NEPA an evaluation of reasonably foreseeable impacts is required, the Commission believes that an analysis of impacts beyond 1000 years should be provided in the DOE/NYSERDA EIS. Thus, information will need to be evaluated to determine if peak doses might occur after 1000 years and to define dose consequences and impacts on potential long-term management of residual

radioactivity at the site. Depending upon the outcome of the EIS review, the Commission may need to consider the need for environmental mitigation.

- A. 7 Comment. Some commenters were concerned about the possible application of alternate criteria, as allowed under the LTR, to West Valley, or that the policy statement should at least clearly identify the dose limit cap under alternate criteria.
- A. 8 Response. In addition to the unrestricted release limit of 25 mrem/yr TEDE, the LTR also contains alternate criteria for restricted release, which allows for a dose limit of up to 100 mrem/yr TEDE, with restrictions in place, and caps the public dose limit at 100 or 500 mrem/yr TEDE if the restrictions fail. Applying alternate criteria to a specific site requires opportunities for public involvement. coordination with the EPA, and direct approval of the Commission. The alternate criteria in the LTR were developed for difficult sites to minimize the need to consider exemptions to the LTR, although exemptions also may be considered. Under appropriate circumstances and based on a sitespecific analysis, the Commission considers the application of alternate criteria protective of public health and safety. Absent a detailed site-specific analysis, it is premature for the Commission to make any judgments, at this time, on the acceptability or nonacceptability of applying alternate to the WVDP or criteria or any portion of the NRC-licensed site. In any event, neither the alternate criteria in the LTR nor · will be approved by the Commission without full prior public participation, involvement of the EPA, and a Commission determination that there is reasonable assurance that there would not be undue hazard to life and
- A. 9 Comment. There were also comments about the use of the ALARA process in the LTR at West Valley. Some believed that the ALARA process might be used to justify dose limits higher than those allowed by the LTR.
- A. 10 Response. As stated previously, the LTR does allow for releases with different dose limits. Generally, ALARA is used to reduce doses below authorized limits. Under the LTR, the ALARA process is not used to permit doses above the 25 mrem/yr TEDE limit without restrictions, the 100 mrem/yr TEDE limit with restrictions. or the 500 mrem/yr TEDE cap if restrictions fail.

B. Comments on LTR guidance

A variety of comments were received on NRC's LTR guidance as it relates to West Valley. Since the time that NRC's LTR became final in 1997, the NRC staff has been developing guidance to support it. In September 2000, the NRC released guidance for decommissioning, in the form of a standard review plan (SRP) ("NMSS Decommissioning Standard Review Plan," NUREG-1727).

- B. 1 Comment. A number of commenters expressed concern with how the critical group would be defined for dose assessment purposes.
- B. 2 Response. For the LTR, the critical group means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances (10 CFR 20.1003). The "Statement of Considerations" for the LTR notes that the critical group would be the group of individuals reasonably expected to be the most highly exposed, considering all reasonable potential future uses of the site, based on prudently conservative exposure assumptions and parameter values within modeling calculations. NRC's SRP for decommissioning addresses two generic critical group scenarios—the resident farmer" and the "building occupancy" scenarios. The SRP also presents approaches for establishing site-specific critical groups based on specific land use, site restrictions, and/ or site-specific physical conditions. DOE/NYSERDA derivation of the critical groups for West Valley will need to be addressed in the EIS documents. In addition to NRC review and comment, the EIS documents will be available for public review and
- B. 3 Comment. There were also several comments relating concerns that long-term stewardship costs and impacts on special populations will not be properly factored into the cost/benefit analysis, or that there should be better guidance provided on what should be considered in the cost/benefit analysis.
- B. 4 Response. DOE and NYSERDA will determine the extent to which these issues are covered in the DOE/
 NYSERDA EIS. In addition, NRC will review and comment on any cost/
 benefit analysis in the EIS. The cost/
 benefit analysis that DOE/NYSERDA develop for West Valley will need to be part of the EIS documents available for public review and comment.
- B. 5 Comment. Some commenters suggested that there should be criteria for what are allowable engineered

barriers and whether or not they are considered institutional controls.

B. 6 Response. Because of the wide range of residual radioactive contamination encountered at decommissioning sites licensed by NRC, the LTR and NRC's decommissioning guidance are not prescriptive as to the criteria for, or acceptability of, sitespecific institutional controls and engineered barriers. The "Statement of Considerations" for the LTR might be read to conclude that engineered barriers are included within institutional controls. However, neither term is defined. In the Commission's view, "engineered barriers" referred to in the "Statement of Considerations" for the LTR are distinct and separate from institutional controls. Used in the general sense, an engineered barrier could be one of a broad range of barriers with varying degrees of durability, robustness, and isolation capability. Thus, NRC guidance in Appendix I of the SRP on the LTR distinguishes institutional controls from physical controls and engineered barriers. Institutional controls are used to limit intruder access to, and/or use of, the site to ensure that the exposure from the residual radioactivity does not exceed the established criteria. Institutional controls include administrative mechanisms (e.g., land use restrictions) and may include, but not be limited to, physical controls (e.g., signs, markers, landscaping, and fences) to control access to the site and minimize disturbances to engineered barriers. There must be sufficient financial assurance to ensure adequate control and maintenance of the site and institutional controls must be legally enforceable and the entity charged with their enforcement must have the capability, authority, and willingness to enforce the controls. Generally, engineered barriers are passive man-improve a facility's ability to meet a site's performance objectives. Institutional controls are designed to restrict access, whereas engineered barriers are usually designed to inhibit water from contacting waste, limit releases, or mitigate doses The isolation capability, durability, and robustness of a specific barrier will need to be evaluated in the DOE/NYSERDA EIS. The ability of a barrier to inhibit access of the inadvertent intruder is a separate issue from whether a barrier is an institutional control. The dose analyses for a site with engineered barriers will need to consider the reasonableness of a breach by an inadvertent intruder.

C. Comments on Implementing the LTR

C. 1 Comment. There were some comments identifying who should be the long-term steward of the site if longterm stewardship is required as part of site closure. Some commenters also provided suggestions on how site longterm stewardship should be maintained at West Valley if it is needed (onsite

staff, perpetual license).

C. 2 Response, NRC expects that these site-specific issues will be covered in the DOE/NYSERDA EIS and addressed in the preferred alternative. The identification of a long-term custodian is not an NRC responsibility but will be determined from negotiations involving DOE and NYSERDA and possibly the U.S.Congress. From the NRC perspective, both DOE and NYSERDA represent governmental entities and either would be acceptable as a long-term custodian.

C. 3 Comment. One commenter requested consideration of how the LTR would be implemented on the decommissioned portions of the site if there were areas of the site that could

not meet the LTR.

- C. 4 Response. Although the LTR does not specifically address differing release standards on a single site, NRC recognizes that the approach to decommissioning at West Valley may include portions of the site being released for unrestricted use, and portions of the site being released for restricted use, as well as portions of the site remaining under license, because of a failure to meet the LTR. In the Commission's view, the LTR is sufficiently flexible to allow for such circumstances. In particular, the Commission believes that for those portions of the site that are unable to demonstrate compliance with the LTR's restricted release requirements, the dose limits should be viewed as goals in order to ensure that cleanup continues anna ann an mar dùr air i a technically and economically feasible. The Commission also believes that after cleanup to the maximum extent technically and economically feasible is accomplished, alternatives to release under the LTR criteria may need to be contemplated. Specific examples of these alternatives are a perpetual license for some parts of the site or from the LTR. The NRC expects that these issues will be fully addressed in the DOE/NYSERDA EIS.
- D. Comments on NRC's Process for Prescribing the Decommissioning Criteria
- D.1. DOE recommended, for the reasons described in comments D.1.1,

D.1.3, and D.1.5 below, that NRC withhold assigning the LTR as the decommissioning criteria until NRC does a site-specific analysis of the environmental effects of decommissioning West Valley.

D.1.1 Comment. The LTR GEIS (NUREG-1496) does not support the use of the LTR at a complex site like West Valley: therefore, a specific EIS for this action needs to be completed by NRC to finalize the criteria.

D.1.2 Response. Although the LTR GEIS did not specifically address the decommissioning of a spent fuel reprocessing site, it did evaluate the decommissioning of a range of reference facilities (e.g., fuel cycle facilities and reactors). In promulgating the LTR, the Commission stated in Section VI of the "Statement of Considerations" that it will conduct an environmental review to "determine if the generic analysis encompasses the range of environmental impacts at the particular site." The Commission further stated that it "will conduct an independent environmental review for each site-specific decommissioning decision where land use restrictions or institutional controls are relied upon by the licensee or where alternative criteria are proposed" as it recognized that the environmental impacts for these cases cannot be analyzed on a generic basis. Thus, the environmental impacts from the application of the criteria to the WVDP will need to be evaluated for the various alternative approaches being considered in the process before NRC decides whether to accept the preferred alternative for meeting the criteria permitted by the LTR. NRC expects to be able to rely on the DOE/NYSERDA EIS for this purpose. NRC does not anticipate the need to prepare its own duplicative EIS as NRC can consider the environmental impacts described in the DOE/NYSERDA EIS in approving the narticular decommissioning criteria for the WVDP under the LTR. As an EIS cooperative agency, NRC may adopt all or parts of the lead EIS agency's NEPA documents. Under this arrangement, if NRC is satisfied with the final DOE/ NYSERDA EIS, then NRC will adopt it to fulfill its NEPA responsibilities under the WVDP Act. If NRC is not satisfied with the final DOE/NYSERDA EIS, then it will adopt as much of it as possible and modify or supplement it as necessary. In such a situation, NRC would publish its own draft EIS document for public review and comment before finalizing it. Once finalized, NRC's West Valley NEPA responsibilities would be fulfilled under the WVDP Act.

The WVDP Act does not address license termination for the site. The actual license termination for the site, if and when pursued, will be conducted under the Atomic Energy Act (AEA) of 1954, as amended. At the time of NRC license termination under the AEA (if license termination is pursued), NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

D.1.3 Comment. The NRC's prescription of decommissioning criteria is not being coordinated with the current NEPA process as suggested by the DOE/NRC Memorandum of Understanding (MOU) on West Valley.

D.1.4 Response. The process described in the DOE/NRC MOU (Section B (4)), for consulting on a sitespecific analysis of decommissioning requirements was developed to allow DOE and NRC to evaluate a range of approaches to specifically address the decommissioning of the WVDP. Thereafter, NRC was to prescribe the decommissioning criteria. At the time the MOU was signed, no comprehensive general criteria existed for decommissioning NRC-licensed sites. Decommissioning criteria were determined on a case-by-case basis. However, through the rulemaking process completed in 1997, which promulgated the LTR, there was an evaluation of various regulatory approaches for decommissioning NRClicensed sites and the selection of a range of regulatory approaches with criteria, in the final rule.

Except as provided in 10 CFR 20.1401, the LTR applies to all NRC's licensed sites. The Commission recognized, as noted in the "Statement of Considerations" for the LTR, that there would be sites with complex decommissioning issues that would be resolved by site-specific environmental reviews which considered various alternative methods for decommissioning and application of the LTR. In the Commission's view, the use of the two-step prescribing processfirst, the decision to use the LTR, and second, to use the DOE/NYSERDA EIS, to consider the impacts of the different approaches for decommissioning, before deciding whether to accept the particular approach that DOE intends to use to meet the LTR---is consistent with the intent of the MOU that various approaches be analyzed in developing the WVDP decommissioning criteria.

D.1.5 Comment. Finalizing the LTR now as the decommissioning criteria for the WVDP at the West Valley site limits the options for closure of the NRClicensed Disposal Area (NDA).

D.1.6 Response, The Commission does not believe that prescribing the LTR criteria for the WVDP at the West Valley site as the applicable decommissioning goal for the entire NRC-licensed site will limit DOE from developing acceptable closure options for the NDA or any other part of the NRC-licensed site. Prescribing the LTR now is warranted because NYSERDA, as a licensee of the Commission, is subject to the LTR after NYSERDA's NRC license is reactivated at the conclusion of the WVDP. It follows that DOE should also be subject to the LTR as it is the surrogate for NYSERDA in decommissioning facilities used for the project. Therefore, it is appropriate to prescribe the LTR now for the WVDP, with the site-specific decommissioning issues resolved through the process described in Response D.1.4 above. Applying the LTR to the WVDP will provide an opportunity to DOE, as would be given to any licensee, to consider a range of approaches to achieve acceptable decommissioning. consistent with public dose limits. If parts of the NRC-licensed site cannot meet the LTR, the Commission will consider alternatives to the criteria in the LTR if it can be demonstrated that public health and safety will be protected. The NRC expects that these issues will be fully addressed in the DOE/NYSERDA EIS.

E. Comments on Jurisdictional Aspects of Prescribing the Decommissioning Criteria

E.1 Comment. Many commenters suggested that, because the Statelicensed Disposal Area (SDA) is immediately adjacent to the WVDP and part of the West Valley site, the allowable dose from the closure and/or decommissioning of it should be considered comprehensively with the allowable dose from the NRC regulated part of the site.

E.2 Response. NRC's authority only extends to the NRC-licensed portion of the site. It also should be noted that the LTR recognizes that people can be exposed to up to four sources of radiation and still meet the nationally and internationally accepted public dose limit of 100 mrem/yr TEDE in part 20. In considering the environmental

NYSERDA EIS will need to consider the number of sources to which the critical group may be exposed. However, NRC continues to dialogue with State representatives to exchange information on issues of mutual interest regarding potential sources of public exposure.

E.3 Comment. A few comments were made indicating that NRC ought to prescribe the dose limits in EPA's decommissioning guidance to West Valley, because they are more protective and could be applied to the site after NRC regulatory authority ceases. Likewise, a comment was made that the decommissioning criteria issue between NRC and EPA should be resolved before the criteria are prescribed.

E.4 Response. The Commission believes that the LTR dose limits plus ALARA requirements provide protection comparable to dose limits preferred by EPA in its guidance documents. The Commission notes that the LTR was promulgated by the Commission in 1997 pursuant to an Administrative Procedure Act rulemaking accompanied by a generic EIS and voluminous regulatory analysis, including consideration of numerous public comments. EPA's guidance documents have gone through no such public process. The Commission believes that decommissioning the site to the LTR criteria ensures that public health and safety and the environment will be protected. Although there is a lack of agreement between NRC's rule and EPA's guidance documents on the appropriate upper bounds on decommissioning criteria, the NRC practice of applying ALARA principles to NRC dose limits will most likely result in an NRC approved decommissioned site that satisfies the EPA criteria as well. In fact, EPA has indicated that it believes that the 25 mrem/yr TEDE cleanup dose limit in the LTR will be "protective at this site." See Letter from Paul Giardina, EPA to John Greeves, NRC (July 23, 2001). Because the LTR requirements do ensure adequate protection of the public health and the environment, and, as indicated in the preceding paragraph, EPA agrees with this conclusion for West Valley, the Commission believes that it is not necessary to wait for a formal resolution of the differences between NRC and EPA on generic decommissioning standards before proceeding with prescribing site-specific decommissioning criteria for the WVDP. As stated previously, EPA will be involved in any proposal to use alternate criteria in the LTR or

from 10 CFR part 20, if so requested.

F. Comments on the Use of Incidental Waste Critéria at West Valley Site

F.1 Comment. Many comments were received concerning the use of the incidental waste criteria at West Valley. Most commenters did not want NRC to allow for the "reclassification" of any HLW at this site to waste incidental to reprocessing. If it were allowed, it

should be done in a way that provides for public participation. One commenter agreed that it will have to be done, but that the Commission should prescribe the criteria that are necessary and appropriate for the incidental waste determination. One other commenter believes that use of DOE's Order 435.1 is the appropriate process for reclassifying residual HLW as incidental.

F.2 Response. Section 6 (4) of the WVDP Act defines HLW as including both (1) liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste and (2) such other material as the Commission designates as HLW for the purposes of protecting the public health and safety. Since 1969, the Commission has recognized the concept of waste incidental to reprocessing, concluding that certain material that otherwise would be classified as HLW need not be disposed of as HLW and sent to a geologic repository because the residual radioactive contamination after decommissioning is sufficiently low as not to represent a hazard to the public health and safety. Consequently, incidental waste is not considered HLW. See, Proposed Rule-Siting of Commercial Fuel Reprocessing Plants and Related Waste Management Facilities (34 FR 8712; June 3, 1969), Final Rule—Siting of Commercial Fuel Reprocessing Plants and Related Waste Management Facilities (35 FR 17530; November 14, 1970), Advance Notice of Proposed Rule-making to Define HLW (52 FR 5992, 5993; February 27, 1987), Proposed Rule—Disposal of Radioactive Waste (53 FR 17709; May 18, 1988), Final Rule-Disposal of Radioactive Waste (54 FR 22578; May 25, 1989), and Denial of Petition for Rulemaking: States of Washington and Oregon, (58 FR 12342; March 3, 1993).

The Commission believes that practical considerations mandate early resolution of the criteria that should guide the incidental waste determination. Vitrification of the highlevel wastes at West Valley is nearing completion, at which point DOE intends to close down the vitrification facility. To delay providing the Commission's view for incidental waste could adversely impact the DOE, as it may prove extraordinarily expensive after the vitrification facility is shut down to provide vitrification capacity for any additional waste that must be shipped elsewhere for disposal. Indeed, in light of the fact that the site will ultimately revert to control by NYSERDA under an NRC license, both NYSERDA and NRC have an interest in ensuring that the

incidental waste determination need not be revisited.

In light of these considerations, the Commission is now providing the following criteria for incidental waste determinations.

The waste should be processed (or should be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical; and

(2) The waste should be managed so that safety requirements comparable to the performance objectives in 10 CFR part 61 subpart C, are satisfied.

The resulting calculated dose from the incidental waste is to be integrated with all the other calculated doses from the remaining material at the entire NRClicensed site to ensure that the LTR criteria are met. This is appropriate because the Commission does not intend to establish separate dose standards for various sections of the

NRC-licensed site.

Previously the NRC has provided advice to DOE concerning DOE's classification of certain waste as incidental waste for clean-up of HLW storage tanks at both Hanford and Savannah River. As noted above, NRC intends to apply the LTR criteria for the WVDP at the West Valley site, reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is in compliance with the requirements of the LTR. The Commission has decided that the most recent advice provided to DOE for the classification of incidental waste at the Savannah River site,9 with some additional modifications, as the appropriate criteria that should be applicable to West Valley. These criteria are risk-informed and performancebased in that the criteria allow DOE the flexibility to develop innovative approaches to meeting the performance objectives in part 61. In effect, DOE should undertake cleanup to the maximum extent that is technically and economically practical and should achieve performance objectives consistent with those we demand for the disposal of low-level waste. If satisfied, these criteria should serve to provide protection of the public health and safety and the environment and the resulting calculated dose would be integrated with the resulting calculated doses for all other remaining material at the NRC-licensed site. It is the Commission's expectation that it will apply this criteria at the WVDP at the site following the completion of DOE's

site activities. In this regard, the impacts of identifying waste as incidental to reprocessing and not HLW should be considered in the DOE's environmental

G. Comments Related to How the Site Should Be Decommissioned

G.1 Comment. There were many comments and suggestions that all the waste at this site should be perhaps temporarily stabilized, or packaged and perhaps temporarily stored, but ultimately removed from the site. There were also some comments on what are the important pathways for, and manmade barriers to control, contaminant transport at the site.

G.2 Response. The Commission appreciates the public's identification of, and input on, these issues. The decisions related to alternative approaches to decommissioning the West Valley site will be evaluated in the DOE/NYSERDA EIS, and reviewed by NRC for their ability to protect public health and safety and the environment. The EIS will also be available for public comment before being finalized.

H. Comments on the Wording of the Draft Policy Statement

H.1 Comment. Several comments were made about the last part of a sentence in the Draft Policy Statement under the section entitled "Decommissioning Criteria for the WVDP." It states that "* * * following the completion of DOE/NYSERDA's EIS and selection of its preferred alternative, the NRC will verify that the specific criteria identified by DOE is within the LTR and will prescribe the use of specific criteria for the WVDP." Many suggested that prescribing the use of the specific criteria after the selection of the preferred alternative in the EIS is confusing, not what is meant by the WVDP Act, and would allow adjustment of the criteria after the EIS is completed.

H.2 Response. As addressed above in response to the various comments, the Commission's intent is to prescribe the generally applicable requirements of the LTR now, before the completion of the site-specific EIS. After completion of the site-specific DOE/NYSERDA EIS, NRC will evaluate the compliance status of the preferred alternative with respect to the LTR, as described in the Commission's final policy statement. This is a two-step process. The first step is prescribing the LTR, a set of criteria that allows for unrestricted releases, restricted releases, and alternative releases, that applies to all NRC licensees. Prescribing decommissioning criteria now for the WVDP allows DOE to develop alternative approaches for

⁸ See NRC Staff Requirements Memorandum "SECY-99-0284-Classification of Savannah River Residual Tank Waste as incidental," May 30, 2000.

meeting those criteria and consider their impacts in its site-specific EIS.

The second step is for NRC to evaluate on a site-specific basis the approach for meeting the LTR. This will be done after the DOE/NYSERDA EIS is completed and NRC adopts it or otherwise produces its own NEPA evaluation of the site-specific criteria developed in the DOE/NYSERDA EIS. NRC will be evaluating DOE's and NYSERDA's preferred alternative for meeting the LTR and other alternatives presented in the DOE/NYSERDA EIS.

This process is in accordance with the "Statement of Considerations" for the LTR, which describes the relationship between the GEIS for the LTR and sitespecific decommissioning actions. A site-specific EIS is prepared in cases where the range of environmental impacts of the alternatives at a specific site may not be within those considered in the GEIS for the LTR. This is similar to the approach that NYSERDA, as an NRC licensee, would need to meet if the license were not being held in abeyance. The Commission is satisfied that this approach is within the intent of the WVDP Act for the prescription of decommissioning requirements by NRC.

The WVDP Act does not address license termination for the site. The actual license termination for the site, if and when possible, will be conducted under the AEA, as amended. At the time of NRC license termination under the AEA (if license termination is pursued), NRC will need to conduct an environmental review to determine if an EIS is necessary to support actual license termination. The language from the draft policy statement was changed in the final policy statement to reflect the process described above.

H.3 Comment. The policy statement should not paraphrase the LTR and others' statements on West Valley.

H.4 Response. The Commission was attempting to provide context to the draft policy statement by paraphrasing the LTR or others' statements on West Valley. To avoid confusion or misinterpretation in the Final Policy Statement, it will contain a disclaimer to the effect that notwithstanding any paraphrasing of the LTR in the Policy Statement, the language of the LTR itself is controlling in determining how it is to be applied at West Valley. The paraphrasing of others' statements will be avoided.

I. Other Comments

I.1 Comment. What are the implications of the policy statement regarding NRC's policies regarding Native Americans.

- I.2 Response. NRC staff has examined the draft policy on decommissioning criteria for the WVDP and has not identified any implications in relation to the Commission's guidance regarding Native Americans. The Commission has directed the NRC staff to implement the spirit and letter of President Clinton's April 29, 1994, Executive Memorandum to ensure that the rights of sovereign Tribal governments are fully respected and to operate within a government-togovernment relationship with Federallyrecognized Native American Tribes. In addition, the staff has been directed to address Native American issues on a case-by-case basis, operating with Tribal Governments on a government-togovernment basis. In response to the interest expressed by the Seneca Nation of Indians in NRC activities at WVDP, the NRC staff has added the Seneca Nation to its service list which will provide the Seneca Nation with copies of documents and meeting notices related to NRC's activities at West Valley that the NRC may publically release. The NRC staff will address issues raised by the Seneca Nation of Indians in accordance with the Commission's guidance.
- 1.3 Comment. One commenter claims that NRC is required by law to define "transuranic waste" for West Valley and determine the disposition of that waste.
- I.4 Response. Section 6(5) of the WVDP Act defines transuranic waste for the WVDP in terms of radioisotopes and the lower limit of concentration of those isotopes. It also states that NRC has the authority to prescribe a different concentration limit to protect public health and safety. NRC's position on this issue is detailed in a letter from M. Knapp, NRC, to W. Bixby, DOE, dated August 18, 1987. This letter states that, to demonstrate protection of public health and safety, the transuranic concentration of project wastes acceptable for on-site disposal will be such that, by analysis, safety requirements comparable to the performance objectives in 10 CFR part 61 subpart C are satisfied. The resulting calculated dose from the transuranic waste is to be integrated with all the other calculated doses from the remaining material at the NRC-licensed site to ensure that the LTR criteria are met. As with incidental waste, the Commission is not establishing a separate dose standard that applies solely to the transuranic waste.

V. Final Policy Statement

Statement of Policy

Decommissioning Criteria for the West Valley Demonstration Project (WVDP)

Under the authority of the WVDP Act, the Commission is prescribing NRC's License Termination Rule (LTR) (10 CFR part 20, subpart E) as the decommissioning criteria for the WVDP, reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is in compliance with the requirements of the LTR. The criteria of the LTR shall apply to the decommissioning of: (1) The High Level Waste (HLW) tanks and other facilities in which HLW, solidified under the project, was stored; (2) the facilities used in the solidification of the waste; and (3) any material and hardware used in connection with the WVDP. Also under authority of the WVDP Act, the Commission is issuing criteria for the classification of reprocessing wastes that will likely remain in tanks at the site after the HLW is vitrified, subsequently referred to as "incidental waste.

The resulting calculated dose from the WVDP at the West Valley site is to be integrated with all other calculated doses to the average member of the critical group from the remaining material at the entire NRC-licensed site to determine whether the LTR criteria are met. This is appropriate because the Commission does not intend to establish separate dose standards for various sections of the NRC-licensed site. The LTR does not apply a single public dose criterion. Rather, it provides for a range of criteria. Briefly stated, for unrestricted release, the LTR specifies a dose criterion of 25 mrem/yr total effective dose equivalent (TEDE) to the average member of the critical group plus as low as reasonably achievable [ALARA] considerations (10 CFR 20.1402). For restricted release, the LTR specifies an individual dose criterion of 25 mrem/year TEDE plus ALARA considerations using legally enforceable institutional controls established after a public participatory process (10 CFR 20.1403). Even if institutional controls fail, individual doses should not exceed 100 mrem/yr TEDE . If it is demonstrated that the 100 mrem/yr TEDE criterion in the event of failure of institutional controls is technically not achievable or prohibitively expensive. the individual dose criterion in the event of failure of institutional controls may be as high as 500 mrem/yr TEDE. However, in circumstances where restricted release is required, if the 100 mrem/yr TEDE criterion is exceeded, and/or the use of alternate criteria has

been determined, the area would be rechecked by a responsible government entity no less frequently than every 5 years and resources would have to be set aside to provide for any necessary control and maintenance of the institutional controls. Finally, the LTR permits alternate individual dose criteria of up to 100 mrem/yr TEDE plus ALARA considerations for restricted release, with institutional controls established after a public participatory process (10 CFR 20.1404). The Commission itself must approve use of the alternative criteria, after coordination with the U.S. Environmental Protection Agency (EPA) and after consideration of the NRC staff's recommendations and all public comments.10

The Commission also recognizes that decommissioning of the West Valley site will present unique challenges, which _ As a may require result, the final end-state may involve a long-term or even a perpetual license or parts of the site where clean up to the LTR requirements are prohibitively expensive or technically impractical. It is important that all parts of the site be decommissioned to the extent technically and economically feasible. Therefore, in addition, the Commission expects decontamination to the maximum extent technically and/or economically feasible for any portion of the site remaining under a long term or perpetual license or for which an ı from the LTR is sought. In sum, the Commission believes that for those portions of the site that are unable to demonstrate compliance with the LTR's restricted release requirements, the dose limits should be viewed as goals, in order to ensure that cleanup continues to the maximum extent that is technically and economically feasible. If complying with the LTR's restricted release requirements is technically impractical or prohibitively expensive, from the LTR may be appropriate, provided that protection of the public and the environment can be

The Commission's application of the LTR to the WVDP is a two-step process: (1) NRC is now prescribing the application of the LTR; and (2) after the completion of the site-specific Department of Energy (DOE)/New York State Energy Research and Development Authority (NYSERDA) Environmental

Impact Statement (EIS) 13 and selection of the preferred alternative, NRC will verify that the approach proposed by DOE is appropriate. The WVDP Act does not address license termination of the NRC license for the site, or portions thereof, which will be conducted (if license termination is possible and pursued) under the Atomic Energy Act (AEA) of 1954, as amended. If full or partial license termination of the NRC license is pursued, at that time NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

Decommissioning Criteria for the NRC-Licensed Disposal Area (NDA) and State-Licensed Disposal Area (SDA)

NRC will apply the criteria in the LTR to the NDA within the West Valley site. because the NDA is under NRC jurisdiction. However, the NDA presents some unique challenges in that some of this material contains significant quantities of mobile, long-lived radionuclides which could potentially remain in this facility. It is recognized that because of the nature of radioactivity at West Valley, reasonably foreseeable impacts might occur after 1000 years, under certain scenarios. Under NEPA, an evaluation of the reasonably foreseeable impacts is required. Therefore, the Commission believes that an analysis of impacts beyond 1000 years should be provided in the DOE/NYSERDA EIS which will be subject to public comment.

NRC does not have regulatory authority to apply the LTR criteria to the SDA adjacent to the WVDP site boundary, because the SDA is regulated by the State of New York. However, NRC recognizes that a cooperative approach with the State to the extent practical should be utilized to apply the LTR criteria in a coordinated manner to the NRC-licensed site and the SDA.

Decommissioning Criteria for License CSF-1 (NRC Site License)

The criteria in the LTR will also apply to the termination of NYSERDA's NRC license on the West Valley site after that license is reactivated. For those portions of the site covered by the WVDP Act, it is NRC's intent to authorize that any or alternate criteria authorized for DOE to meet the provisions of the WVDP Act will also apply to NYSERDA at the time of site license termination, if license termination is possible. The NRC site license termination is not addressed in the WVDP Act. Therefore the NRC site license termination is subject to the provisions of the Atomic Energy Act of 1954 as amended.

Use of Incidental Waste Criteria at West Vallev

Section 6 (4) of the WVDP Act defines HLW as including both (1) liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste and (2) such other material as the Commission designates as HLW for the purposes of protecting the public health and safety. The Commission believes that practical considerations mandate early resolution of the criteria that will guide the classification of incidental waste. The vitrification of the wastes at West Vallev is nearing completion, at which point DOE intends to close down the vitrification facility. To delay defining classification criteria for incidental waste could adversely impact the DOE as it may prove extraordinarily expensive after the vitrification facility is shut down to provide vitrification capacity for any additional waste that must be shipped elsewhere for disposal. Indeed, in light of the fact that the site will ultimately revert to control by NYSERDA under an NRC license, both NYSERDA and NRC have an interest in ensuring that the incidental waste determination need not be revisited.

In light of these considerations, the Commission is now providing the following criteria that should be applied to incidental waste determinations.

(1) The waste should be processed (or should be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical; and

(2) The waste should be managed so that safety requirements comparable to the performance objectives in 10 CFR part 61 subpart C, are satisfied.¹²

Consistent with the overall approach in applying the LTR to the WVDP and to the entire NRC-licensed site following

³⁰ The material set out in the text is a brief summary of the LTR. Notwithstanding the words used in the text, the language of the LTR governs this matter.

¹¹ DOE has decided to descope the draft 1996 EIS into two separate EISs. DOE will be the lead agency on the EIS that will address WVDP facility decontamination and management of waste currently stored at the site. NRC expects to be kept informed of progress as required under the DOE/NRC Memorandum of Understanding (MOU). DOE and NYSERDA will be the lead agencies on the EIS that will address decommissioning. NRC expects to participate as an EIS cooperating agency. Hereinafter, this second EIS where NRC will be a cooperating agency will either be referred to as the decommissioning EIS or the DOE/NYSERDA EIS. unless otherwise noted.

^{**}The dose methodology used in 10 CFR part 51 subpart C is different from that used in the newer 10 CFR part 20 subpart E. However, the resulting allowable doses are comparable and NRC expects DOE to use the newer methodology in 10 CFR part 20 subpart E. part 61 is based on International Commission on Radiological Protection Publication 2 (ICRP 2) and part 20 is based on ICRP 26.

conclusion of the WVDP, the resulting calculated dose from the incidental waste is to be integrated w.... other calculated doses from material remaining material at the entire NRC-licensed site.

Previous Burials Authorized Under 10 CFR Part 20

The "Statement of Considerations" for the LTR, Section C.3, Other Exemptions (62 FR 39074) provided that in regard to past burials the Commission "* * would continue to require an analysis of site-specific overall impacts and costs in deciding whether or not exhumation of previous buried waste is necessary for specific sites. In addition, the general exemption provisions of 10 CFR part 20 are available to consider unique past burials on a case-by-case basis." The NDA contains significant amounts of buried radioactive material that was previously authorized under older provisions of part 20. This material will require appropriate evaluation as part of site license termination.

Environmental Analysis

An EIS is not needed at this step of the process of prescribing the LTR because the Commission is not establishing a new requirement for the site. This site is licensed to NYSERDA and, therefore, is already subject to the LTR by operation of the Commission's regulations. DOE in essence is acting as a surrogate for NYSERDA . The environmental impacts of applying the LTR to NRC licensees were evaluated in the Generic Environmental Impact Statement (GEIS), NUREG-1496, that supported the LTR. In promulgating the LTR, the Commission stated, in Section VI of the "Statement for Considerations" that it will conduct an environmental review to "determine if the generic analysis encompasses the range of environmental impacts at the particular site." The Commission further stated that it "will conduct an independent environmental review for each sitespecific decommissioning decision where land use restrictions or institutional controls are relied upon by the licensee or where alternative criteria المنازلين المحمولين المنازلين المنازلين المنازلين المنازلين environmental impacts for these cases cannot be analyzed on a generic basis. The environmental impacts from the application of the criteria will need to be evaluated for the various alternative approaches being considered in the process before NRC decides whether to accept the preferred alternative for meeting the criteria permitted by the LTR. NRC intends to rely on the DOE/ NYSERDA EIS for this purpose.

For NEPA purposes, DOE is considered the lead Federal agency. NRC, in view of its responsibilities under the WVDP Act, is considered a cooperating agency for this EIS and is participating in the development of the DOE/NYSERDA EIS. NRC does not anticipate the need to prepare its own duplicative EIS, since it can consider the environmental impacts described in the DOE/NYSERDA EIS in approving the particular decommissioning criteria for the WVDP under the LTR. Under this arrangement, if NRC is satisfied with the DOE/NYSERDA EIS, this EIS will fulfill the NEPA responsibilities for NRC under the WVDP Act. If NRC is not satisfied with the final DOE/NYSERDA EIS, then NRC will adopt as much of it as possible and modify or supplement it as necessary. In such a situation, NRC would publish its own draft EIS document for public review and comment before finalizing it. Once finalized, NRC's West Valley NEPA responsibilities would be fulfilled under the WVDP Act.

The WVDP Act does not address license termination for the site. License termination of the NRC license for the site, or portions thereof, is conducted (if license termination is possible) under the AEA. If NYSERDA pursues either full or partial license termination of the NRC license, at that time NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

Availability of Documents

NRC's final policy statement on decommissioning criteria for West Valley is also available at NRC's Public Electronic Reading Room link (http:// www.nrc.gov/NRC/ADAMS/ index.html] on NRC's home page (http:// www.nrc.gov). Copies of documents cited in this section are available for inspection and/or reproduction for a fee in the NRC Public Document Room, 11555 Rockville Pike, Room O-1F21, Rockville, MD 20852. The NRC Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays. Reference service and access to documents may also be requested by telephone (301-118 1F8F or 808 85F-1203), between 8:30 a.m. and 4:15 p.m.; or by e-mail (PDR@nrc.gov); fax (301-415-3548); or a letter (NRC Public Document Room, Mailstop O-1F13, Washington, DC 20555-0001). In addition, copies of: (1) SECY-98-251, "Decommissioning Criteria for West Valley;" (2) the transcript of the public meeting held January 12, 1999; (3) the Commission's SRM of January 26, 1999, concerning the January 12, 1999, public meeting on

SECY-98-251; (4) SECY-99-057, "Supplement to SECY-98-251. Decommissioning Criteria for West Valley;''' (5) the Commission's vote sheets on SECY-98-251 and SECY-99-057; (6) the Commission's SRM of June 3, 1999, on SECY-98-251 and SECY-99-057; (7) the draft policy statement issued December 3, 1999; (8) the transcript of the public meeting held January 5, 2000; and (9) the public comments on the draft policy statement can be obtained electronically on NRC's home page at the Commission's Activities link (http://www.nrc.gov/ NRC/COMMISSION/activities.html).

Dated at Rockville, Maryland, this 25th day of January, 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

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BILLING C

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[Docket Nos. 50-250 and 50-251]

Florida Power and Light Company Turkey Point Plant, Units 3 and 4 Notice of Availability of the Final Supplement 5 to the Generic Environmental Impact Statement Regarding License Renewal for the Turkey Point Plant, Units 3 and 4

Notice is hereby given that the U. S. Nuclear Regulatory Commission (NRC) has published a final plant-Supplement 5 to the Generic Environmental Impact Statement (GEIS), NUREG-1437, regarding the renewal of operating licenses DPR-31 and DPR-41 for the Turkey Point Plant, Units 3 and 4, for an additional 20 years of operation. The Turkey Point Plant units are operated by Florida Power and Light Company (FPL). Turkey Point Plant is located in Dade County, Florida. Possible alternatives to the proposed action (license renede no action and reasonable alternative methods of power generation.

In Section 9.3 of the report:

The staff recommends that the Commission determine that the adverse environmental impacts of license renewal for Turkey Point Units 3 and 4 are not so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable. This recommendation is based on (1) the analysis and findings in the Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants. NUREG-1437; (2) the ER [Environmental Report] submitted by FPL: (3) consultation with other Federal, State, and local agencies; (4) the staff's own independent review; and